its policy of withdrawing from the superintendence of temples, Mr. Conolly, the Collector of Malabar, reported that "the pagodas of Malabar generally are and always have been independent of Government interference. They are either the property of some influential family the ancestors of which built and endowed them, or, as is commonly the case, are claimed and managed by a body of trustees who derive their rights from immemorial inheritance and who conduct the affairs of the temple under the patronage and superintendence of some Raja or other person of consideration. This latter state of things, it will be seen, is that which the Government are desirous of introducing everywhere." Mr. Conolly goes on to say that the only temples under the Government control were those which were escheated to them in consequence of the extinction of the families of the Betutnad Raja and of Chennat Nair of Palghat.

163. Besides the temples of Naranguida Cottah which was taken under the management of the Government in consequence of disputes between *uralars* (*See* letter of Mr. Conolly, dated 14th September 1841), the Government handed over the temples under its management to the Palghat Rajah and to the Zamorin, the legality of which it is unnecessary to discuss. In consequence of the absolute inaction of Government in the matter of exercising superintendence over temples in Malabar under Regulation VII of 1817 the High Court held in *Ittunni Panikkar* v. *Irani Nambudripad* [1] that the District Court had no power to appoint a temporary manager under S. 5 of Act XX of 1863.

164 In the Native States of Cochin and Travancore the Raja's right of *melkoima* still exists and is exercised. In *Sirkar* v. *Subbien Seshayyan* [2] the Royal Court of Final Appeal in Travancore composed of Krishnaswamy Rao, C. J., Ormsby and Sitarama Aiyar, JJ. held that the Government had the power of interfering in the affairs of temples

1. (1881) I. L. R. 3 Mad. 401.
2. (1889) 8 Tr, L. R. 1,

under the control of hereditary trustees in cases of gross neglect of duty or misconduct and of assuming the management of such temple though such assumption of management would leave the right of the aggrieved party to obtain redress by an appeal to the courts. The learned judges said: "We are not prepared to hold with the learned Judges of the High Court that the Government in the first instance are bound to seek the aid of the Civil Courts to exercise this power . . . . . Reason point to the conclusion that the Government which is *parens patriae* must possess higher powers than those of its subjects." The learned Judges must have intended to decide only that the Government have the power of assuming the management temporarily until the appointment of trustees, for it would be impossible to hold that the Government could retain the management permanently and make itself the trustee of the temple. In England it would appear that the right of the Government as *parens patriae* to interfere with charities in order to protect them was exercised only through courts [1] but in India where regular Courts of Justice did not exist in many states the ruler probably interfered directly in the matter of charities. "When the king is the founder of an eleemosynary lay corporation, the visitorial power is vested in the Crown and is committed by royal authority to the Lord Chancellor, who may thus be called upon to redress abuses properly falling within the province of a visitor; but the jurisdiction belongs to him in his personal character only as representative of the Crown and not as a Judge in Chancery." [2]

165. Hitherto in describing the rights of the *Uralars* the terms managers and trustees have been used indifferently, and both lawyers and judges speak of uralars of Malabar temples and *Dharmakartas* of other temples as trustees. Thus in *Patinharipat Krishnan Unni Nambiar* v. *Chekkur*

1. *See* Tudor's Charitable Trusts, pp. 88. 89.
2. Stephen's Commentaries, 13th Edition, Vol. III, p. 84.

Manakkal Nilakantan Bhattathripad [1] the Madras High Court speaks of the property of the temple as being vested in the *Uralars* and not in the *Karaima Samudayam* or the hereditary agent of the *Uralars*. And Act XX of 1863 speaks of the trustee, manager or superintendent of temples, and so does Regulation VII of 1817. But it is doubtful whether it would be either correct or advisable to introduce the technical rules relating to trusts in this country so far as religious and charitable institutions are concerned. The Indian Trusts Act II of 1882 has, no doubt, transplanted in India the English Law of private trusts; and trusts deeds have become perfectly acclimatised amongst us. But it is very doubtful whether it is at all an advantage to regard the manager of religious and charitable institutions in this country as trustees according to the technical meaning of the word. Suppose such a manager alienates properties belonging to a temple, to a person who purchases it *bona fide* without knowing that it is trust property, the result of holding that the manager is a trustee owning the legal interest would be that the property would pass absolutely to the alienee to the prejudice of the temple. Such a view of the rights of the manager was unknown in India, and there is no reason why it should be now introduced instead of looking upon him as a person who has merely certain powers of dealing with the properties of the temples similar to those of a manager of an undivided Hindu family, or the guardian of an infant. The view taken by the Judicial Committee of the Privy Council in *Maharanee Shibessouree Debia* v. *Mothoornath Acharjo* [2] would seem to be against importing the technical rules of trust in such cases. Their Lordships say:—"The Taluq itself with which these were connected by tenure was dedicated to the religious services of the idol. The rents constituted therefore in legal contemplation its property. The Shebait had not the legal property, but only

1. (1881) I. L. R. 4 Mad. 141.
2. (1869) 13 M. I. A. 270.

the title of a manager of a religious endowment." There is a large body of precedents in which the property is treated as being vested in the idol.[1] In *Jogindra Nath Roy* v. *Hemanta Kumari Debi*[2] their Lordships say "There is no doubt that an idol may be regarded as a juridicial person capable as such of holding property though it is only in an ideal sense that property is so held. And probably this is the true legal view when the dedication is of the complete character." "Even so", their Lordships say " that the possession and management of the dedicated property belongs to the Shebait and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the Shebait and not in the idol". Their Lordships accordingly held that the minor was entitled to the protection of S. 7 of the Limitation Act. This case seems to make it clear that the ownership does not vest in the *Uralar* in the sense the legal ownership vests in a trustee. The observations of the Madras High Court in *Patinharipat Krishnan* v. *Nilakantan*[3] could not have been intended to denote his strict legal position, but only to show that the Uralan and not the Samudayi is the representative of the institution. There might be some difficulty in applying the provisions of S. 10 of the Limitation Act to suits against the Uralan or Dharmakarta. But the Courts have been holding that a temple Dharmakarta is within the section and the language of the Privy Council in *Jagendra Nath Roy* v. *Hemanta Kumari Debi*[2] would seem to justify holding that the property is vested in the trustee

1: *See* West and Buhler's Hindu Law pp. 201, 815, 817 ; Prannath Saraswatis' Religious Endowments p 116, and the cases quoted in Ghose's Hindu Law pp. 692, 702 and *Bojomoyee Dassee* v. *Troylucklio Mohine Dassee* (1901) 6 C. W. N. 267 ; *Nagendra Nandinee Dassee* v. *Raja Benoy Krishna Deb* (1902) 7 C. W. N. 121 ; *Nilamony* v. *Jagabandhu* (1896) I. L. R. 23 Cal. 536, *Kanwar Doorganath Roy* v. *Ram Chunder Sen*. (1876) L. R. 4 I. A. 52.

2. (1904) I. L. R. 32 Cal. 129 (P. C.)

3. (1881) I. L. R. 4 Mad. 141.

for the purpose of the Limitation Act though not for the purpose of protecting an alienee. On the other hand, the Privy Council in *Vidya Varudhi* v. *Balusami* [1] takes the view that in ordinary cases neither the manager of a temple nor the *mataadhipathi* is a trustee. As stated before, the word *Uralan* is not always used in exactly the same sense. Where the temple is a private institution, the *Uralan* may be practically an owner. In the case of some public temples he is not even the manager or Dharmakarta which is the ordinary signification of the term, but only a subordinate manager acting under another who is the real Dharmakarta.

166. In the case of many temples in Malabar there are more *Uralars* than one belonging to different families. In such cases the *Uraima* is sometimes spoken of as vested in the Tarwads to which the *Uralans* belong. [2] This is however an inaccurate and misleading statement for the *Uraima* cannot be said to be vested in the whole Tarwad. All the members of the Tarwad are not managers, and have no present right to interfere in the affairs of the temple. If this were not so, where there are several tarwads having the *Uraima* a single tarwad having a large number of members might be able to swamp all the other tarwads having only a few members, and to practically monopolise the management. There is no doubt that in determining the majority where it is necessary to do so, each Tarwad counts only for one, whatever the number of members constituting it. It would, moreover, lead to endless confusion, if every individual member of each of the tarwads is recognised as possessing a present right of management. They merely possess the right to succeed to the managership when each becomes the manager of the tarwad. This is the view taken in *M. Kelu* v. *Paidel* [3] and in *Vellavialyetchanan Nambudiri* v. *Sivarama Pattar* [4] and is assumed to be the correct view by the Privy Council in the

1. (1921) I. L. R. 44 M 831 : 41 M. L. J. 346.
2. *Ukanda Wariar* v. *Raman Nambadiri* (1863) 1 M. H C. R 262
3. (1886) I. L R, 9 Mad. 473 4. (1890) 1 M. L. J. 290.

case of *Rajah Varma* v. *Ravi Varma* [1]. It is thus well put in S. A. 1133 of 1894 :—"The karnavan of the tarwad *qua uralan* exercises his *uraima* right not on behalf of the family but as a personal right and on his own responsibility. The other members of the family may be possible future heirs to the trusteeship but have no concurrent right in the *uraima*." The two former cases assume that a person having merely the right of succeeding to the management is entitled to sue to set aside a decree passed against the manager of the temple. In *Chathappa Nambiar* v. *Koman* [2] it was held that the junior members cannot maintain a suit for possession of the properties of a public Devaswom improperly alienated by the *Uralan* who was their karnavan. The Anandravans have no right of interfering with the management nor are they under any liabilities for breaches of trust which might be committed by their karnavans as *uralans* [3]. If the temple was a private one the case would have been different for then they are in the position of co-owners and can sue [4]. The *Uralan* being a trustee cannot validly transfer his office and even a custom recognising such a transfer would be invalid [5]. He cannot do so even for a period [6]. Nor can it be within his power to nominate another as *uralan* [7]. Nor can he delegate his powers [8]. In one case, it was held that a Nambudiri Antarjanam (as the ladies are called) cannot be *uralan* as she cannot properly exercise the rights and duties appertaining to that office [9]. The proposition is a doubtful one as the uralan's functions are secular and there is no reason why sex should be a disqualification for

1 (1876) I. L. R. 1 Mad. 235 (P. C.) 2. (1914) 2 L. W. 61.

3. *Vishnu* v. *Sankara* (1920) 13 L. W. 369.

4. *Ravi Varma Rajah* v. *Rama Subramanya Pattar* (1916) 4 L. W. 576

5. *Rajah Varma* v. *Ravi Varma* (1876) I. L. R. 1 Mad. 235 (P. C.)

6. *Rama Varma* v. *Raman Nair* (1882) I. L. R. 5 Mad. 89.

7. *Kannan* v. *Pazhaniandi* (1901) I. L. R. 24 Mad. 438.

8. *Mannian Nambudripad* v. *Aguiharnan Nambudripad* (1914) M W. N. 251 ; 23 I. C 141 ; See also *Parasurama Udayan* v. *Avedaji Bhaskar Thirumal Rao* (1921) 41 M. L. J. 17.

9. *Kesavanan Nambudiri* v. *Abhikesava Vanthiar* (1910) 21 M. L. J. 175.

executing the trust when it does not disqualify her exercising her other duties as the head of the family. A person who as *sarvaswadanom* son-in-law is entitled to the properties of the Illom was also held entitled to the *uraima* rights of the Illom in S.A. 550 of 1902 ; similarly a person who has been nominated an heir to a Nambudiri Illom in accordance with custom [1]. A difficult question may sometimes arise whether when the manager of a family is removed from the management, he ceases also to possess the *Uraimaship* which he had while he was manager. This would really depend on the question whether the *Uraima* belongs to the karnavan as such or to the eldest member of a family. According to the actual practice of the people, it is the karnavan that possesses the *Uraimaship*. If the *uraimaship* is vested in the senior in age whether he be manager or not, then the removal of a senior member from the managership of the family would not work a forfeiture of his rights as *Uralan*, but if it is the karnavan as such that is entitled to act as *uralan*, it should be otherwise. The latter is considered the normal position. [2] On renunciation of karnavanship also, the same result follows. [3] It may happen that a person who is both the karnavan of a tarwad and the *uralan* of a temple (by virtue of being the karnavan) is removed from for *the uraimaship* of the temple for misconduct as *uralan*. This will, of course, not interfere with his right to be manager of his Tarwad. Would the senior Anandravan then succeed to the *Uraimaship* ? Apparently according to the view taken in *Gopainatha Panda* v. *Ramachandra Panigrahi* [4], he would. There would then be the anomaly of the *Uraimaship* being vested in a person who is neither the eldest nor the managing member of the Tarwad. But it is, by no means, certain whether the correct view in such cases is not that so long as the dismissed *Uralan* is alive

1. *Keshavan* v. *Vasudevan* (1884) I. L. R. 7 Mad 297.
2. S. A. 582 of 1904 ; *Narayanan Nambudripad* v. *Sankaran* (1909) 22 M. L. J. 126.
3. *Narayanan Nambudripad* v. *Sankaran* (1909) 22 M. L. J. 126.
4. (1896) 6 M. L. J. 255.

his right does not descend to his heirs and the Court having the power to fill up vacancies in the office of trustee would have to appoint a person to hold the office till his death.

167. As regards the *Uralan's* powers they are exactly like those of the trustees elsewhere. He can alienate temple property for proper necessity. He can *bona fide* renew leases, dismiss servants for misconduct and maintain suits to protect estates. In granting renewals he cannot very much anticipate the period of redemption. [1] The renewals would not be binding unless they are *bona fide* and in the usual course of management [2]. But as it is an ordinary incident of management the alienee need not scrutinise necessity [3]. It is doubtful if a trustee can himself create a kanom. Kanom partakes of the nature of a mortgage and there could ordinarily be no special reason why a mortgage should be created by a trustee. The tenure may be usual but that is hardly a justification for the creation of it. *Verumpattom* lease is the ordinary tenure. That or even other reclaiming and other leases might be created by a trustee but his power to create what is substantially a mortgage should not be recognised. Granting permanent leases cannot certainly be within his power. [4] A *saswatom* in favour of the family of the *uralan* is a gross breach of trust [5]. In *Rairu Nambiyar* v. *Narayan Nambiyar* [6] Benson and Sundara Aiyar JJ. held that though the temple is private they are nevertheless trust properties and the karnavan was not entitled to dispose of them in the same manner as he could deal with properties belonging to the Tarwad at any rate until all the beneficiaries, that is all the members of the Tarwad put

1. *Gangadharan Pattar* v. *Manavikraman* (1917) 6 L. W. 491.
2. *Narayanan Nambudripad* v. *Sankaran* (1909) 22 M. L. J. 126.
3. S. A. 945 of 1903; *Vythinathien* v. *Padmanabha Pattar* (1918) 45 I. C. 659.
4. *Chirakkal Kovilagath* v. *Mayan kutti* (1910) 8 M. L. T. 309; *Kunhunni Panikkar* v. *Raman* (1919) M. W. N. 742.
5. *Nilakandan Nambudri* v. *Narayanan* (1912) 17 I. C. 128.
6. (1911) 21 M. L. J. 585.

an end to the temple [1]. It may be open to doubt whether the members for the time being can put an end to the temple so as to affect those that may be subsequently born.

168. As there are frequently more than one *Uralan* questions arise as to how far non-joinder or non-consultation of some of them is fatal to the validity of the transactions effected by the rest. The question has been elaborately discussed in *Kunhan* v. *Moorthi*. [2] The point is not peculiar to Malabar. All the trustees must act together and non-consultation amounts to exclusion. [3] If there has been proper consultation and meeting the majority present may act. [4] Even the majority cannot without consulting the minority bind the institution. [5] The receipt of money by one or even the majority of the trustees without consulting the others would not bind. [6] When the trustees are equally divided, or when there are two trustees only as in *Cheeru* v. *Narayana Nambudiri* [7] the transaction cannot be upheld. But if a melcharth was agreed to be granted by all the *Uralans* but was actually executed by only three, the fourth refusing to sign, the melcharth was held to be valid in S. A. 701 of 1913. Again if the act sought to be impeached is that of one of the trustees the others can act without consulting him. [8] As stated already, delegation of any of the powers of the *Uralan* must be justified by custom ; otherwise it cannot be upheld. A *Samudayee* appointed by an *Uralan* being only a servant, it

1. See ***Appu Pattar*** v. *Karumba Umma* (1893) 21 M. L. J. 588.
2. (1910) I. L. R. 34 Mad. 406.
3. *Abhikeseva Vathiar* v. *Kesavan Nambudri* (1910) 21 M. L. J. 178.
4. *Charavur Teramath* v. *Urath Lakshmi* (1883) I. L. R. 6 Mad. 270,
5. S. A 1611 of 1895; S. A. 905 and 1551 of 1893; S. A. 1699 of 1916. *Parama Taragan* v. *Govindachan* (1914) 24 I. C. 939; *Mannian Nambudripad* v. *Agnihotran Nambudripad* (1914) M W. N. 251:
6. *Nethiri Menon* v. *Gopalan Nair* (1915) 29 M L J. 291.
7. (1918) I. L. R. 42 Mad. 335.
8. *Raman Nair* v. *Narayanan Nambudripad* (1902) I. L R. 26 Mad. 461 but *see Chandu* v. *Kuttiyil Haji* which takes a different view (1922) 42 M. L. J. 280.

has been held that he cannot maintain a suit for possession of the lands though he has large powers of management. [1] But some unreported cases held that a *Samudayee* can maintain a suit. The question would seem to be one of usage. If the office is hereditary and is not dependent upon the will of the *Uralan*, and the usage of the institution is that the *Samudayee* is to manage, he can maintain a suit. In such a case, possibly the position of the *Uralan* is merely that of a superintending trustee. [2] If the position of the *Samudayee* is merely that of a temple servant it is difficult to understand how he can maintain the suit but as pointed out in the case last mentioned there is difficulty in conceiving of a hereditary attorney for the hereditary *Uralan*. In *Parameswaran* v. *Shankaran* [3] it was held that one of the trustees cannot maintain a suit without consulting the others and it was followed in [4] and *Savitri Antarjanam* v. *Raman Nambudiri* [5]. So far as actions for redemption are concerned *Raman Nair* v. *Narayanan* [6] made an exception on the ground that S. 91 of the Transfer of Property Act gave a right of action independently of any question of consultation. The whole question has been discussed in *Kunhan* v. *Moorthi* [7]. It is there held that if the antecedent action by the trustees is essential for giving a cause of action for the suit, as for instance the dismissal of a servant or termination of a tenancy, the action will have to go unless there has been a consultation and a valid act of dismissal or termination of a tenancy but if the cause of action is there apart from any action on the part of the trustees it is

1. *Patinharipat Krishnan Unni Nambiar* v. *Nilakantan* (1881) I. L. R 4 Mad. 141.

2. *Raman Somayajipad* v. *Kunhi Kutti* (1917) 34 M. L. J. 344.

3. (1891) I. L. R. 14 Mad. 489.

4. (1899) I. L. R. 23 Mad. 82: 9 M. L. J. 312.

5. (1900) I. L. R. 24 Mad 296

6. (1912) I. L. R. 26 Mad. 451 followed in 12 L. W. 425.

7. (1910) I. L. R. 34 Mad. 406.

a matter for the discretion of the courts whether the action should be permitted or not. Where there are several hereditary trustees, there is nothing improper in one of them being appointed as managing trustee for certain purposes by the other trustees though so far as acts like the institution of suits etc. are concerned, they must all be parties and must act after mutual consultation. A notice to quit given by the managing trustee may be valid to terminate the tenancy.[1]

169. Hereditary rights of temple service are comprehensively termed *Karaima*. The *Karaima* cannot be transferred [2]. The other servants are *shanti* who corresponds to the Archaka outside Malabar, and *Pattamali*, who is the rent collector, usually a casual servant of the *Uralan* but occasionally a hereditary servant of the temple. The *Shanti* usually holds office for one year during which time he must reside within the precincts of the temple.

1. *Angamuthu* v. *Ramalinga* (1920) 39 M. L. J. 685.
2. *Kanni* v. *Achuta Pistarodi* (1868) 3 M. H. C. R 380.

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CHAPTER XXI.

LAND TENURES.

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(a) *Malabar tenures.*

169. There are early accounts from which ample information can be gathered as to the land tenures of Malabar. The only indigenous account of any value is contained in Vyavahara Mala which formed in part the basis of Major Walker's valuable report to which reference will be made later. The first account after British conquest is to be found in the report of Mr. Farmer who was one of the commissioners appointed to inspect the countries ceded by Tippu Sultan. It is dated 1793. In 1800, Dr. Buchanan was deputed by Marquis of Wellesley to make a special inquiry into the circumstances of Malabar and Kanara. His Journal contains valuable references to the land tenures of the country. In 1801, an elaborate treatise on the several forms of conveyances and leases then in use was prepared

by Major Walker. He derived his information mainly from Brahmins and also drew substantially from Vyavahara Mala, the Sanskrit legal manual already referred to. The proceedings of the Board of Revenue 1803, the report of Mr. Thackeray, Collector of Malabar 1807, which form appendices to the Fifth Report, the Fifth Report and the report of Mr. Warden, Collector of Malabar from 1804 to 1816 also contain references to the tenures prevailing in Malabar at the time. But by far the most complete account is to be found in the Glossary prepared by Mr. Graeme, one of the Judges in the Southern Court of Circuit who was deputed to Malabar with a special commission to introduce the new system of police and magistracy and to consider what improvements might be introduced into the Revenue Administration of the District, whose report submitted in 1822 called from Sir Thomas Munro the encomium of being "on the whole the fullest and the most comprehensive report ever received of any province under this Government" and the proceedings of the Sudder Court dated 1856 which embodied the result of the inquiry instituted by it at the instance of the Board of Revenue. Both these are considered very high authority [1] and have largely contributed to the settling of the law as to these tenures. In 1881, Mr. Logan was deputed to inquire into the general question of the tenure of land and of tenants' rights in Malabar. His report though vitiated by his fanciful theories, is of great value. It was the subject of consideration by a commission which prepared certain draft Bills. The whole subject was considered by Sir Charles Turner, then Chief Justice of Madras, who submitted a minute which is of the greatest value in understanding the land tenures of the District.

1. *Achuta Menon* v. *Sankaran Nair* (1911) I. L. R. 36 Mad. 380 ; *Pythilingam Pillai* v. *Kuthiravattath Nair* (1905) I. L. R. 29 Mad. 501 ; *Theyyan Nair* v. *Zamorin of Calicut* (1903) I. L. R. 27 Mad. 202 ; *Zamorin of Calicut Sama Nair*, (1919) 38 M. L. J. 275 ; *Ayyakutti* v. *Krishna Pattar*, (1922) M. W. N. 192 : 43 M. L. J. 1. (F B.)

170. The first thing that struck these early observers was the extent to which private right of property was recognised in Malabar. There is this for instance in Walker's Report after noting that the *Janmakaran* possesses the entire right in the soil : "This much is certain that in no country of the world is the nature of this species of property better understood than in Malabar nor its rights more tenaciously maintained" and again in the Fifth report "The lands in general appear to have constituted a clear private property more ancient and probably more perfect than that of England (here the reference is to lands both in Canara and Malabar.)" They could not help contrasting this with the state of things elsewhere but it was realised early that there was really no difference in the quality of the ryot's interest. Where land was lightly assessed as in Canara or was not assessed at all as in Malabar property was highly valued; while in other parts of the country where it was highly assessed, the value of the ryot's interest in spite of its complete character was nil. [1]. This interest is known in Malabar as *Jenm*. In Canara it was known as *muli*. The former word means origin —the latter root. They signify the same thing, namely the hereditary proprietary interest in land. Mr. Logan put forward a fanciful theory about the origin of *Jenm*. He maintained that Kanomkars were originally proprietors of land but as the exactions of the chieftains became heavy, they found it necessary to have a protector to whom they gave a share of the produce in return for his protection. This theory was subjected to trenchant criticism by Mr. Thompson and by Sir Charles Turner, C. J. and has no advocate at present.

171. In Malabar and in tracts administered as portions of it there is no presumption that immemorial waste or forest lands are the property of the Government [2]. All land is pri-

1. *Vykunta Bapuji* v. *Government of Bombay* (1875) 12 Bom. H. C. Appx : 1 at 210-212.

2. *Secretary of State* v. *Vira Rayan* (1885) I. L. R. 9 M. 175.

vate property, escheated and forfeited estates being excepted. This was recognised by Dr. Buchanan in 1800, by Major Walker in 1801 and by Mr. Thackeray in 1807. It was also recognised in Colonel Munro's Report of 1807 and in the declarations of various Collectors since though there have been laments over the "pestilential legal fiction." The mythical account that ascribes the reclamation of the West Coast and its distribution among Nambudiris to Parasurama may have been partly responsible for this position of affairs. *Secretary of State* v. *Kadirikutti* [1] adds beds of tidal and navigable streams to the excepted lands. Whether the exception extends to beds of natural but non-navigable streams which flow through several jenmis' lands is an open question. Where the stream flows through the lands of the same jenmi, it seems to have been conceded in one of the cases relating to the matter that it would belong to the jenmi. A thorough discussion of the subject is to be found in Mr. Justice Sankaran Nair's judgment in *Meenakshi Amma* v. *Secretary of State* [2]. The other side of the question is stated by Mr. Justice Sadasiva Aiyar in the same case (who did not however give a final opinion on the point.) The argument of the learned Judge seems to proceed on the lines followed by Mr. Justice Muthuswami Iyer in *Secretary of State* v. *Kadirikutti* [1]. Ownership of waste lands is by occupation, argues the learned Judge, under the Hindu Law to which Malabar Customary Law gives effect and all occupiable land may come within the general presumption but it is unreasonable to extend the general presumption to land which by nature is unoccupiable as the river bed is. Even so, it could hardly be said that beds of non-navigable and non-tidal streams which during the hot season are mostly uncovered by water are not capable of occupation. The view of Mr. Justice Muthuswami Iyer

1. (1890) I. L. R. 13 M. 369.
2. (1914) 26 M. L. J. 385.

proceeds moreover not merely on this ground but also on the further ground that the public have certain rights in the stream which negatives the existence of private right. It is also noteworthy that his Lordship's judgment assumes that the right of the jenmi to the bed of non-tidal and non-navigable streams is unquestionable [1]. There was an appeal from the judgment in *Meenakshi Amma* v. *Secretary of State* [2], but the appeal went off on a point of pleading. It has since been decided that there is no law or usage recognising Crown's right in such lands in Palghat in respect of which alone there has been contest [3]. There is no reason having regard to the general presumption that all property is private property, why the presumption of ownership of the riparian owner *usque ad medium filae* should not appply to Malabar. Wherever the land belongs to the Government, it is the practice to charge *Jenmabhogam* in addition to the ordinary assesssment.

172. As already stated there was no regular system of land tax in Malabar till the advent of Hyder, the only recorded instances of the levy of a land tax being in 1731-32 A. D. when the Kolattiri Raja hard pressed by the invasion of the Bednore Rajah imposed a tax of 20 p. c. on the pattam of all rice and garden lands in Kolattanad, and again in 1757 when the Zamorin imposed a tax of one anna on every para sowing piece of land as *Kavalphalam* or protection tax against the threatened Mysore invasion. Regular land tax was levied during the Mysore regime. The Mysorean settlement did not proceed upon any settled plan or definite principles. In South Malabar except in the Palghat Taluq lands were assessed on what was known as *Huzur Niguthi* system. In A. D.1776-1777 Sirdar Khan, the Governor of Malabar, prepared accounts giving the total paras of seed area and the outturn

1. *Secretary of State* v. *Kadirikutty* (1890) I. L. R. 13 M. 369.

2. (1914) 26 M. L. J. 385.

3. *Neelakandan Nambudiripad* v. *Secretary of State* (1919) 12 L.W. 371 : 55 I. C. 770.

multiple and so also the number of productive trees of each kind and fixed certain proportion known as *Niguthivithu* or assessed seed as the state share. What share Haider fixed is not known; probably he fixed the total demand from each *Nad* leaving it to local authorities to make the distribution. On garden lands a tree tax was nominally fixed upon each kind of tree. In the Palghat Taluk the old system of *Kaval-phalam* was retained but the assessment was gradually raised from 1 anna to 1½ fanams. Till 1789 when the Rajahs fled, in North Malabar they were left almost in the position of Zamindars paying the revenue due from their *Nads* in a lump sum distributing it on the lands of various proprietors according to their estimated yield. When by the treaty of Seringapatam in 1792, Malabar was ceded to the Company, they retained the old Mysorean standard of assessment but instead of collecting the tax directly, gave quinquennial leases to the various Rajas. This system proving a failure, it was gradually cancelled, the Rajahs being given a fifth of the revenue for their maintenance. Though attempts were made from time to time to revise the assessment, till the recent settlement it substantially remained as it was under the Mysore regime.

173. In 1798-99 Mr. Smee, a member of the commission appointed to execute the office of Supervisor and Chief Magistrate directed a Paimash or Survey of the District. His Paimash apparently prepared by Village officers was never acted upon and is of little value. The next attempt at a proper survey was made by Mr. Warden. He carried out in 1805-06 what is called a *Jenmi Paimash*; he obtained from each landed proprietor under his signature a detailed statement of his landed property with a declaration that it was correct and that he would willingly forfeit any land subsequently found to be omitted. He then proceeded with the aid of surveyors from Coimbatore to survey all the wet lands and the accounts he prepared between 1806-1810 are known as *Hinduri* or *Alavu Paimash*. Up to the recent settlement it remained the most reliable account though it has not been

acted upon. The next attempt at survey was made by Mr. Graeme in 1820-23. He obtained returns from each cultivator showing the total number of trees and their outturn. They were also required to deposit their title deeds in the Collector's office. After some years' trial, the scheme failed. These accounts bear the endorsement that they were never verified or acted upon and the bulk of them were reported by the Collector Mr. Vaughan as of grossly fraudulent description. The next paimash was one directed by Mr. Clemenston in 1833. The accounts prepared are known as *Pugil Vivaram* accounts *i. e.*, accounts containing particulars of the holding of each individual tax payer. It was the practice for landholders when selling lands to throw as much revenue on the portion alienated as possible, leaving the portion reserved as lightly assessed as possible. This was possible because there was no account specifying the details of lands and assessment. To obviate this consequence the above accounts were directed by Mr. Clemenston but the work was committed to village officials. The Tahsildars were to check the accounts but till 1843, only a small part was received and about half of them were copied into a form of *Kulvar Chitta* but directly it was sought to use or verify them, they were found to be unsatisfactory and the scheme was dropped. Mr. Robinson (subsequently Sir William) described them in his letter to the Board of Revenue as not worth examining as at best they recorded imperfectly certain particulars as they existed in 1833-43. The value of these accounts as evidence of title and possession came up for consideration before the Privy Council in *Venkateswara Iyan* v. *Shekhari Varma* [1]. Their Lordships observe that at the highest they were only evidence of possession but that they were hardly public documents as they do not appear to have been confirmed or acted upon. In *Kesavan* v. *Vasudevan* [2], it was held that an entry in the paimash was not *per se* sufficient evidence to establish a right to property. The

1. (1881) I. L. R. 3 M. 384.
2. (1884) I. L. R. 7 M. 297.

evidentiary value of these accounts was elaborately considered in A. S. 284 of 1898. The High Court observe therein that they are admissible even on the Privy Council judgment as evidence of possession and also point out that the criticism that they had never been confirmed and never acted upon, applied only to accounts of 1824—1825 which bear an endorsement to that effect and not to the other accounts which bear no such endorsement though the value of the other accounts also is but slight. They say further that these accounts may be admissible as assertions of title under S. 13 of the Evidence Act, by the individuals who were required to make the statement.

174. The Mysoreans had settled with the tenants but from accident rather than design, the Brahmin and Nayar landholders being afraid to trust their persons to the Muhammadan *cutcheries*. Though in 1805, a settlement with the jenmi had been contemplated the practice continued of settling with the occupier. In accordance with this practice Government used to grant *cowles* to people desirous of occupying waste lands, especially as there was considerable difficulty in ascertaining the jenmi. These cowles conferred no right on the occupier as against the jenmi. The grant was subject to the rights of the jenmi. The position of the cowledar was anomalous. The cowle ensured a favourable rate of assessment. But if he did not settle with the jenmi, he was liable to be evicted. Pending such settlement, his possession was adverse and after 12 years the jenmi's title would become barred [1]. But before eviction he was entitled to be paid the value of the improvements effected by him [2]. The Government used to register the lands in the names of such occupants and claimed to sell the jenmi's interest as well in default of the payment of revenue. But the right of the

1. *Secretary of State* v. *Ashtamurthi* (1889) I. L. R. 13 M. 89; *Muniappan Chetty* v. *Maunarkat Muppil Nair* (1898) I. L. R. 21 Mad. 169: 8 M. L. J. 117; S. A. 1551 of '19.

2. *Secretary of State* v. *Ashtamurthi* (1889) I. L. R. 13 Mad. 89.

Government to do so was negatived in *Secretary of State* v. *Ashtamurthi* [1]. The Government accepted the correctness of the decision and passed Act III of 1896 providing for inquiry and registration by the Collector in the name of such persons as he deems to be proprietors subject to a right of suit by the person entitled thereto questioning the order of the Collector. Every person so registered is deemed to be a landholder and no proceeding taken against such a person shall be held invalid or ineffectual on the ground that such person is not the real or sole proprietor. On the application of the registered proprietor, the Collector may register as occupant jointly with the proprietor any person entitled to occupy such estate under an agreement in writing for a period of not less than five years.

175. By the settlement introduced between September 1900 and June 1904, the revenue system of the District has been brought into line with that of the rest of the Presidency. Apart from settlement with jenmis and the abolition of the tree tax, the chief departure from the old system is that on ordinary land the practice of charging only specified crops has been abandoned. The principle of charging occupation instead of charging cultivation has been adopted subject to this reservation that waste or unoccupied lands are assessed only when they are cultivated or when they become permanently occupied, the building of a house, the planting of fruit trees, erection of permanent fence, conversion of land into wet or the cultivation of a dry crop for three years being the criteria of permanent occupation for the purpose of the registry of the land as occupied.

176. Another thing that struck those observers was the great variety of transfers recognised. According to one writer, it is an indication of the primitive quality of the Malayali mind. Whether it is so or not, it is certainly an indication of the value attached to land by its owners. Another feature that was noted was the fact that all mortgage

1. (1889) I. L. R. 13 M. 89.

and lease-hold tenants were entitled to the value of improvements effected by them which in fact marks off those tenures from similar tenures elsewhere in the Presidency except in Canara.

177. *Verumpattam* is the name for ordinary lease for a year. Two-thirds of the net produce after deducting the cost of seed and cultivation is the customary *verumpattam* rent. If the tenant holds over and pays rent, he is entitled to reasonable notice ending with the agricultural season, but not necessarily six months's notice [1]. The presumption in the absence of evidence to the contrary is that every tenant is a tenant from year to year. [2] In the case of leases of Kovilagom property where renewal fee is paid even a *verumpattam* lessee is entitled to hold the land for twelve years. [1] It was held in *Appu* v. *Amina* [3] that a *verumpattam* tenant was entitled to redeem a prior kanom. The conclusion was based on S. 91 of the Transfer of Property Act and not upon any special usage of Malabar. Mr. Moore says (p. 192) that in the absence of a special contract a *verumpattam* lessee was not entitled to the value of improvements effected by him except in respect of buildings constructed with the consent express or implied of the landlord. The correctness of this position is, it seems rightly, called in question by Chief Justice Turner in his minute on land tenures. As early as 1854, the South Malabar District Court held that he was entitled [4] According to Major Walker also, he is entitled to the value of improvements. That even a trespasser was held entitled to the value of improvements though with a deduction is a strong argument in support of the right of the tenant. The question is of no moment now as his right is recognised by the Malabar Compensation for Tenants' Improvements Act. In the absence of an express prohibition,

1. S. A. 561, 562 and 608 of 1916.
2. *Ittinan* v. *Govindan Namboudri* (1918) 13 L. W. 397.
3. (1895) I. L. R. 19 M. 151.
4. See 2 Logan CCXXIII.

the tenant has a right to sell in whole or in part or to sub-divide his holding and he is liable to eviction for denial of the landlord's title. These seem to be common features of all leasehold tenures in Malabar [1]. *Verumppattam* is also sometimes known as *Verumkari* or *Verumkozhu*, *Verumpattam Kuzhikanom Kudiyiruppu* prevalent in Calicut has the same incidents as ordinary *Kuzhikanom*. The term *Kudiyiruppu* implies the right to build on the land. *Melpattam* is a lease of trees and enures for one year unless a special term is fixed. *Munpattam, Talapattam or Kattakanom* is a simple lease enuring generally for a year, where the tenant advances a sum equal to the rent of the year as security. Possibly as Sir Charles Turner opines, this is the origin of the *kanom*. The amount is refunded at the end of the term without interest.

178. *Kanom* which is a more favourable tenure with pattam fixed at 50 per cent of the net produce is a special feature of Malabar. *Kanom* is described in the Sudder Court Proceedings as mortgage with possession, the mortgagee recovering interest on the money he has advanced from the produce of the land and paying the net profits (*michavarom*) to the landlord. It thus partakes of the character of both a lease and a mortgage. Sometimes the one character predominates ; sometimes the other. In a *kanom* lease, the lease is the substantial thing, the security being a minor matter. In the case of a *kanom* mortgage, the amount advanced is substantial, the *michavarom* being but a trifling. This was the view propounded in *Silapani* v. *Ashtamurthi* [2]. The question that arose was one of limitation. As the parties had treated the transaction as one of mortgage, their Lordships applied Art. 148. But since then all the *kanoms* have been treated as mortgages. In Ref. Case 1 and 13 of 1905, it has been held that for the purpose of the Stamp Act, where an amount has been advanced as security, the document is to be treated as a mortgage.

1. *Turner's minute* p. 38.
2. (1880) I. L. R. 3 M. 382 (F. B.)

In *Kanna Kurup* v. *Sankara Varma Raja* [1], a kanom document was held invalid for want of attestation under S. 59 of the Transfer of Property Act, though the amount advanced was only three rupees. In fact, the courts have regarded kanom transactions as anomalous mortgages [2], except when no amount is advanced in which case the transaction is regarded as a lease [3]. Tenures resembling kanoms are to be met with elsewhere also but the special feature in Malabar is that kanom tenure is the ordinary mode of enjoying land with the territorial magnates so that it is regarded in much the same light as leases from year to year elsewhere.

179. Mr. Moore thinks that in its origin, kanom was a usufructuary mortgage in North Malabar while in South Malabar, it was a lease. In the Fifth Report Vol. II p. 440, it is stated that it is a tenure at an easy rent and that it can be transferred or mortgaged, the lease to one, the buildings to another. At present, in the absence of express provision to that effect a kanom is not redeemable before twelve years. That is the correct way of stating the rule for it does not expire after twelve years but only on notice [4]. It is open to the parties to provide that the kanom should enure for a larger or shorter period or be redeemable on demand [5]. The intention to cut down the customary period must be clear. A clause to the effect that the property should be surrendered when the money is ready is not sufficient to show such an intention. The clause must be read as referring to a period subsequent to the expiration of 12 years [6]. It is doubtful if this decision would be followed at present. A clause to restore the land when the *paramba* is demanded on receiving the kanom and kuzhi kanom amount was given effect to in *Ahmed Kutti* v.

1. (1920) I. L. R. 44 Mad. 344 : 40 M. L. J. 282.

2. *Kaderkutti* v. *Muhamad* (1914) 24 I. C. 127; *Kuppunni* v. *Paresu Pattar* (1917) M. W. N. 3.

3. *Gopalan Nair* v. *Kunhan Menon* (1907) 17 M. L. J. 289.

4. *Kelappan* v. *Madhavi* (1901) I. L. R. 25 Mad. 452.

5. *Keshava* v. *Keshava* (1877) I. L. R. 2 M. 45.

6. *Kanara Kurup* v. *Govindan* (1882) I. L. R. 5 M. 310.

Kunhamed[1] by ordering redemption earlier than twelve years but a modified view was held in *Mahomed* v. *Ali Koya* [2] in which on a clause similarly worded it was ruled that the kanom was not redeemable in the absence of a special exigency. The last decision was overruled in *Kelu Nedungadi* v. *Krishnan Nair* [3]. Instance of a life kanom is found in S. A. 286 of 12. The transaction was so construed though described as perpetual as there were no words of inheritance. The mere fact that the object is maintenance of the members of the family would not make it irredeemable [4]. The twelve years' term was not always recognised as an incident of this tenure. Mr. Moore says that up to 1853 it was not so regarded. The first decision in which the twelve years' rule was upheld is A. S. 75 of 1853 Sub Court, Calicut. The first decision of the highest Court of Appeal in which the 12 years' rule was recognised is *Moideen* v. *Kumaran Naubudiri* [5]. In Walker's Report the usual term of the kanom is stated to be from 3 to 6 years, in Farmer's Report 3 to 5 years. Mr. Graeme states that in North Malabar it was renewed every three or four years. Rajah's kanoms were treated as exceptions lasting for the life of the grantor but as these people attained the diginity somewhat at a late age, the privilege was a rather doubtful one. Mr. Walker also states that the lease expired with the life of the jenmakaran as well as the kanomdar. Mr. Warden notices an exception when a period is fixed. Both according to Walker and Warden, if the tenant wants to return the land, he may do so suffering a loss of 20 p.c. of his advance as *sakshi*. Similarly if the landlord wants it, he may have the land paying double the value of the improvements. On the expiry of the period, the mortgagor may either redeem or give the tenant a renewal.

1. (1887) I. L. R. 10 M. 192.
2. (1890) I. L. R. 14 M. 76.
3. (1903) I. L. R. 26 M. 727.
4. *Sankaranunni* v. *Appavu Pillay* (1912) 12 M. L. T. 556.
5. Sudder Dec. 1855, p. 137.

At the time of redemption he has to pay the value of improvements, the tenant being responsible for any waste or deterioration. At redemption the landlord either takes a *Polichelluttu* or renewal fee equivalant to *cherulabham* or tenant's profit with certain other perquisites known as *oppu* and *tusi* literally being fees for signing and engrossing the deed. In Greame's Glossary it is also stated that the land is liable to be resumed on non-payment of *michavaram* but the contrary is stated in the Sudder Court Proceedings and the latter is the accepted view at present. Mr. Strange who was deputed in 1852 as Special Comissioner to report on the cause of Mappilla outrages while stating that the tenant should not be disturbed from possession arbitrarily and that the kanom should enure for 12 years also states that it is redeemable when the Raja dies or when the landlord requires more money on the land and the tenant will not provide it and it is obtainable from another or when rents are not paid. Mr. Strange is considered by Mr. Moore as the author of the 12 years' period. However it may be, the period of 12 years is accepted as the customary duration of the tenure in the Sudder Court Proceedings of 1856. The other incidents recognised by the Sudder Court Proceedings are (i) the right of the mortgagee to make further advances (ii) the right of the mortgagor to redeem if the mortgagee refuses to make further advances (iii) forfeiture of the customary period on any attempt to defraud the landlord and usurp the property. These incidents are stated not to apply when the period is fixed in the document. It is also stated that though kanoms are generally renewed at the end of the term, there is no obligation of either side to do so.

180. The incidents of this tenure on the decisions as they stand are as follows. In the absence of a contract to the contrary it enures for a period of 12 years. Non-payment of the *michavaram* does not work forefeiture in the absence of a stipulation to that effect [1]. It is open to the parties to provide for

1. *Shaikh Rautan* v. *Kadangal Shupan* (1862) 1 M. H. C. 112.

forfeiture but the court will relieve against the penalty on payment of the arrears [1]. Kanom whether a lease or mortgage is liable to forfeiture for denial of title [2] and for wilful waste [3]. Where the transaction is a mortgage for a fixed period, the effect of S. 98 of the Transfer of Property Act which applies to anomalous mortgages (which a kanom is) is to make the contract prevail and there will be no forfeiture [4]. This view is criticised by Mr. Moore bu the does not seem to take sufficient note of the terms of S. 98 of the Transfer of Property Act. It looks on the language of the Sudder Court Proceedings also that forfeiture is incurred only when the period is not fixed. It has been accepted in a later case [5] where the question was whether a perpetual kanom is forfeited by denial of title. Their Lordships held that it was not so forfeited on the ground that the perpetual term was a fixed period within the meaning of the above decisions. In A. S. 157 of 1855, Mr. Holloway as Sub-Judge held that the destruction of a bund necessary for irrigation entailed forfeiture. In all these cases, forfeiture only accelerates redemption; it does not involve the loss of the amount paid or compensation for improvements [6]. Where renewal fees have been paid, proportionate refund will be ordered unlike in the case of leases. The mortgagee has no right to insist upon the mortgagor making application for further advances to him alone [8]. It is not open to the tenant to surrender the land before time and demand the money [9]. A kanom does not imply a covenant to pay and therefore the

1. *Kottal Uppi* v. *Thathan* (1871) 6 M. H. C. 258.
2. *Ramen Nayar* v. *Kandapuni Nayar* (1863) 1 M.H.C. 445; *Chumaren Mayuran* (1864) 2 M. H. C. 109.
3. *Imbi Chetty* v. *Narayana Menon* (1899) 9 M. L. J. 306.
4. *Raman Nair* v. *Vasudevan* (1903) I. L. R. 27 M. 26
5. *Rama Nayar* v. *Kannoth* (1915) 2 L. W. 941.
6. *Imbi Chetty* v. *Narayana* (1899) 9 M. L. J. 306.
7. S. A. 269 of 99; *Kammaran Nambiar* v. *Chindan Nambiar* (1894) I. L. R. 18 M. 32.
8. *Marakar* v. *Parameswaran* (1882) 6 M. 140; *Kunhambu* v. *Keshavan*, (1881) I. L. R. 3 Mad. 246.
9. *Moidin Kutti* v. *Valia Rajah*, (1865) 2 M. H. C. 315.

mortgagee cannot sue for sale [1]. If there is an express covenant the mortgagee may sue for sale [2]. At the time of redemption the mortgagor is entitled to have an account taken of the arrears of rent though barred with interest and set off against the amount due to the mortgagee [3]. The mortgagor's right to proceed against the improvements is not affected by any alienation by the mortgagee of his right [4] because the right of the tenant is subject to the right of the landlord to set off [5]. Under the Customary Law he seems to have the right to proceed even against the sub-mortgagee's improvements [6]. There is nothing to prevent the mortgagor from suing for the arrears of rent as they fall due and he may sell the tenant's interest in the land [7]. As already stated, the mortgagor has the right to have account taken of the value of the trees improperly cut [8] and the mortgagee is entitled to any damages for breach of mortgagor's covenant to put him in possession apart from any question of limitation [9]. If the balance is in favour of the mortgagor, he may recover it [10] apart from any question of limitation. Where what is mortgaged is a time expired kanom, the mortgagee is not entitled to damages when he is redeemed [11]. A kanom whenever there is an advance is distinctly a mortgage and is indivisible and neither side can insist on partial redemption [12].

1. *Srideri* v. *Virarayan*, (1899) I. L. R. 22 M. 350.

2. *Ramunni* v. *Brahma Dathan*, (1892) I. L. R. 15 M. 366.

3. *Kanna Pisharody* v. *Kombi Achan*, (1885) I. L. R. 8 M. 381 ; S. A. 261 of 1915.

4. *Achuta* v. *Kali* (1884) I. L. R 7 M. 545 ;

5. See also *Eressa Menon* v *Shamu Patter*, (1897) I. L. R. 21 Mad. 138, and *Vasudeva Shenoi* v. *Damodaran* (1899) I. L. R. 23 Mad 86.

6. *Vedapurati* v. *Avara*, (1901) 25 M. 568 ; *Kanna Pishanody* v. *Kombi Achen*, (1885) I. L. R. 8 Mad. 381 ; *Uinian* v. *Rama*, (1885) I. L. R. 8 Mad. 415.

7. *Achutan Nair* v. *Keshavan*, (1893) I. L. R. 17 Mad. 271.

8. *Kelu Kurup* v. *Kunhamina*, (1914) 25 I. C. 704.

9. *Raman alias Kochu Poduval* v. *Raman Bhattathripad*, (1915) 28 M. L J 184.

10. *Parasurama Pattar* v. *Venkatachalam Pattar* (1913) 25 M L. J. 561.

11. *Moidu Haji* v. *Kunhi Modu*, (1902) 13 M. L. J. 314.

12, *Konna Panikkar* v. *Karunakara* (1892) I. L. R. 16 M. 328; *Huthasan Nambudri* v. *Parameswaran* (1898) I. L. R. 22 Mad, 209 : 8 M. L. J. 309.

Where it is a lease also it is not open to the owner of the reversion to sue for a part except where either the reversion or the leasehold interest has gone into different hands [1]. Under the customary law of Malabar, improvements were classed under three heads (1) *Kurikur* including fruit trees, timber trees, pepper vine, etc., (2) *Chamayoms, i. e.,* buildings, tanks, wells, etc., (3) *Vetthuchamayom or Kilnchamayom* calculated to improve the soil of the land such as clearing of the waste, conversion of parambas into paddy lands, providing irrigation facilities, etc. The rates varied very largely as to payments to be made in different parts of the country and in some parts of Malabar there was the custom of deducting half or a third of the compensation as landlord's share. The compensation paid was consequently very inadequate and by reason of the rise in prices and competition, there were frequent evictions. There was as a result considerable unrest and the Government endeavoured to meet the situation by passing the Malabar Compensation for Tenants' Improvements Act of 1887 (since repealed by Act I of 1900) which is based on the principle of securing the tenant the full market value for his improvements. The basis on which compensation was customarily assessed was the outlay. The Act substituted market value of the improvements as the test. It was hoped by this plan to render eviction less easy and also to provide against hardship on the tenant in the event of eviction. In Travancore the alternative plan was of making the kanomdar's tenure permanent with provision for payment of customary renewal and other fees and for forfeiture and summary sale in case of non-payment of rent. The Travancore Regulation applied only to the lands of bigger jenmies and the State and not to the ordinary small proprietors. The Act of 1887 being found imperfect in some respects, Act I of 1900 was passed to remedy those defects. The Act applies not only to the kanomdar but also to all classes of lessees,

1. *Kannyan Baduvan* v. *Alikutti* (1919) I. L. R. 42 M. 603 (F. B.)

sub-lessees, mortgagees, sub-mortgagees, in possession and also to persons who are *bona fide* in possession with the intention of paying rent to the person entitled to let the waste land but without the permission of that person. The last is the case of a pure squatter that used to be introduced by the Government to whom reference has already been made. In Mr. Logan's Manual Vol. II App. III cxc there is a statement that under the customary law, only agricultural tenants are entitled to improvements. A similar statement was made as to the effect of the Act of 1887 by Mr. Subramaniya Aiyar, as he then was, in the Legislative Council [1]. It is doubtful if this is correct; at any rate, it would seem to be difficult to so restrict the later Act. In *Silapani* v. *Ashtamurthi* [2] it was ruled that the decree should fix the value of improvements and should not leave it to be determined in execution. This plan has been adopted by the Act also but even under the old procedure, it was usual to direct revaluation after decree if the condition of the improvements changed. [3] The Act does not refer to the right of the tenant to cut down trees on the holding. Under the customary law he has the right to cut down all trees planted by himself. [4] Except in so far as it is necessary for the purpose of clearing the land or is necessitated by the course of good husbandry, he cannot cut down trees on the land before the commencement of the tenancy. Even when he is entitled to cut down, the cuttings should belong to the landlord. Can the kanomdar pledge his improvements or his right for compensation so as to affect the landlord? On principle it must be open to him to do the former though not the latter. The tenant is not bound to keep up the improvement for the benefit of the

1. See also S. A. 1446 of 1889.
2. (1880) I. L. R. 3 Mad. 382 (F. B.)
3. *Ramunni* v. *Shanku* (1884) I. L. R. 10 Mad. 167
4. *Vasudevan* v. *Valia Chathu Achan*, (1900) I. L. R. 24 Mad. 47 (F. B.)

landlord. He is entitled to remove it if so inclined and this right must include also the right to pledge. So far as the right to compensation is concerned that is subject to the landlord's right to set off. The right of the pledgee to cut and carry the trees may not be subject to this equity of the landlord. What is said as to improvements and the right of the landlord to set off is illustrative of the whole class of lessees and mortgagees in possession.

181. The jenmi is under no obligation to renew the *kanom* in favour of the tenant in the absence of an express agreement. The right to renewal is forfeited by denial of title [1]. A mere agreement to renew is no defence to the suit for redemption as it is only an agreement and the Transfer of Property Act requires a registered instrument for a valid mortgage [2]. Non-payment of *manusham* or *sowjanyam* one of the numerous names for renewal fee does not invalidate an otherwise valid renewal as it is not of the essence of a valid contract of renewal [3]. The amount if paid will belong to the family and not to the karnavan individually. There is no invariable rule that at the time of each renewal, the value of improvements is settled. The fact that the *purappad* is enhanced may be some evidence that it has been. [4] *Kuttiyali* v. *Ammani Amma* [5] affords an instance of *kanom* in which the tenant was entitled to a renewal after making improvements. A right to perpetual renewal will not be lightly inferred [6] but if clearly granted, may be valid [7].

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1. S. D. C. 625 of 1877 ; Logan Vol. II clxxxviii.
2. *Achutan Nambudri* v. *Koman Nair* (1902) 13 M. L. J. 217.
3. S. A. 877 of '11 ; 23 M. L. J (N. R C.) 20.
4. *Narayana Nayar* v. *Virupalchan* (1881) I. L. R. 4 Mad. 287 ; *Narayana* v. *Narayana* (1884) I. L. R. 8 M. 284.
5. (1920) I. L. R. 44 M. 509 : 41 M. L. J. 202
6. *Gopalan Nair* v. *Kunhan Menon* (1907) I. L. R. 30 M. 300.
7. *Kochamma* v. *Kunhikavamma* (1917) 7 L. W. 119.

182. In the case of *Kuzhi Kanom* or the mortgage of waste land with a view to its being planted, as the tenure is described in the Sudder Court Proceedings, it is stated therein that in the event of the tenant failing to reclaim the land, plant trees and otherwise fulfil the conditions of the deed, he may be dispossessed by the landlord before the expiration of the period specified. Otherwise there is no difference between this tenure and the *kanom* tenure. It is similarly stated that in the case of *kuzhikanom pattam* tenure under which the tenant binds himself to pay a stipulated rent as well as to bring new land under culture, failure in either respect will render the tenant liable to ejectment. *Kanom Kuzhikanom* another variety of this tenure referred to in the Proceedings of the Sudder Court is a mortgage of waste land for improvement, the landlord receiving some pecuniary consideration. Neglect to improve is not a ground in this tenure for forfeiture.

183. *Kuttikanom* is a mortgage of forest land the mortgagee felling the timber and paying fee on each stump or tree to the landlord. The non-payment of stipulated instalments does not render the mortgagee liable to dispossession unless there be a special clause to that effect.

184. *Melcharth* or *melkanom* is kanom given by the jenmi to a third party with power to redeem an outstanding kanom. It is treated as a mortgage [1]. It operates for 12 years from the date of the execution and not for 12 years from the date of redemption of the earlier *kanom* [2]. The *melcharthdar* is entitled to add the actual costs of the redemption action to the amount of the mortgage unless an amount is specified as being the amount payable in respect of the same.

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1. *Kanna Kurup* v. *Sankara Varma Raja* (1920) I. L. R. 44 M. 344 *Kuppunni* v. *Parasu Pattar* (1917) M. W. N. 3.

2. S. A. 218 and 1220 of 1896.

185 *Puramkadan* is further advance made by the *kanomdar* on the security of the land. Interest is usually deducted from the *michavaram*. Whether the amount was payable before the redemption of the kanom arose in *Kunhi Amma* v. *Ahmed Haji* [1]. There was a difference of opinion in the case; Mr. Justice Moore holding that under the customary law it could not be redeemed earlier; the other judges holding the contrary. In S. A. 2178 of 1916 it was held that the mortgagor was bound to redeem the *puramkadan* also. The question is one of construction and not of usage.

186. *Otti* is described in the marginal note to the Sudder Court Proceedings as a usufructuary mortgage the full value of the land being advanced. This tenure gives the mortgagee the entire produce of the land, the landlord merely retaining the proprietary title and the right to redeem. According to these Proceedings where no period has been stipulated, the landlord may pay off the mortgage at any time but it has since been decided that it cannot be redeemed before 12 years [2]. In *Kumini Amma* v. *Parkam Kolusheri* [3] it is generally stated that an *otti* differs from a *kanom* only in two respects: "First in the right of pre-emption which the *othidar* possesses in case the jenmi wishes to sell the premises and secondly in the amount secured which is generally so large as practically to absorb the whole rent". The right of pre-emption includes the right to make further advance and the right is not confined to the twelve years' period [4]. *Ali Hussain* v. *Nilakantan Nambudri* [5] leaves one in doubt if the mortgagor has the right to apply for further advance till after

1. (1899) I. L. R. 23 M. 105.

2. *Edathil Itti* v. *Kopashon Nair* (1862) 1 M. H. C. 122; *Kumini Amma* v. *Parkam Kolusheri* (1863) 1 M. H. C. 261; *Pramatan Tupen* v. *Ramen* (1863) 1 M. H. C. 296.

3. (1863) 1 M. H. C. 261.

4. *Ali Husain* v. *Nilakantan* (1863) 1 M. H. C. 356.

5. (1863) 1 M. H. C. 356.

the expiry of the 12 years' period. In *Mammali* v. *Kunhipakki Haji*[1], the right of the *ottidar* is stated to consist in a right to elect when there has been an attempt on the part of the owner to sell the property to a third person whether he will buy it. It is obvious that such a right can be exercised only when the *Ottidar* knows that the property has been sold to another and the terms on which it is sold. The right may be waived [2]. There would be no question of waiver till the *ottidar* knows what the offer of third parties is [3]. Limitation would commence to run from the date of knowledge. In *Mammali* v. *Kunhipakki Haji* [1], the point is left open whether the right of the *othidar* is to purchase at the same price as is offered by the stranger, or at a reasonable price, the inclination of their Lordships' opinion being in favour of the latter view. It was so laid down by Mr. Holloway as Sub-Judge in A. S. No. 64 of 1859 (Tellicherry.) *In Cheriya Krishen* v. *Vishnu* [4], it is stated that the mortgagee should pay what is *bona fide* offered to the jenmi for his equity of redemption but that he is entitled to be fully informed of the circumstances and the amount of the offer before electing to buy. An arrangement between members of the family by which the property is set apart for some is not a transfer which would entitle the mortgagee to exercise the right of pre-emption [5]. But a re-sale to the vendor does not affect the right of pre-emption brought into existence by the sale [6]. By denial of the jenmi's title the right to retain possession for twelve years is forfeited.[7] It is not forfeited by setting up

1. (1912) I. L. R. 38 Mad. 67.
2. *Ammottli Haji* v. *Kunkayan Kutli* (1892) I. L. R. 15 M. 480 ; *Kanaran Nair* v. *Raman Nambiar* (1893) 4 M. L. J. 46.
3. *Palakunnath Kolayi* v. *Narayana* (1918) 9 I. C. 1010 ; *Krishna Menon* v. *Keshavan* (1897) I. L. R. 20 Mad. 305.
4. (1882) I. L. R. 5 M. 198.
5. S. A. 1671 and 1672 of 1918.
6. S. A. 1114 of 1917.
7. *Kelu Eradi* v. *Puapalli* (1864) 2 M. H. C. 161.

unfounded charges [1]. There is no right of pre-emption against an auction purchaser [2]. This goes against the assumption and even decisions in certain cases [3]. But if the right of the *ottidar* is as indicated above, that is to say, the right to have the property sold to him if the mortgagor desires to sell the property, the conclusion of their Lordships that the rule does not extend to involuntary sales seems unexceptionable. A *kanom* free from payment of rent is not on that account alone an *otti*. The limitation applicable to a suit to enforce the right of pre-emption cannot be Art. 10 as that does not apply to a case where the person claiming the right is in possession. Art. 120 would be the article applicable. According to the earlier decisions, a sale or mortgage in contravention of the *ottidar's* right of pre-emption is invalid against him and he is not bound to submit to redemption by such transferee [5]. Sir Bashyam Aiyangar took a different view in *Ramasami Pattar* v. *Chinnan Asari* [6] (a non-Malabar case) and that view has been applied to a Malabar case in S. A. 1605 of 1901 and subsequently in *Sankaran Mussad* v. *Ussain Haji* [7] where it is held that the mortgagee has only a specifically enforceable right and cannot in the face of the provisions of the Transfer of Property Act requiring a registered instrument to convey the equity of redemption give him the right to plead it in bar as if the property is effectually conveyed to him. *Otti* goes under different names. It is

1. *Kunhali* v. *Kinathe* (1880) I. L. R. 3 M. 74.

2. *Vasudevan* v. *Ittiravichan Nair* (1918) 34 M. L. J. 412

3. *Cheria Krishnan* v. *Vishnu* (1882) I. L. R. 5 M. 198; *Vasudevan* v. *Keshavan* (1884) I. L. R. 7 Mad. 309 ; *Ammottli Haji* v. *Kutti* (1892) I. L. R. 15 Mad. 480.

4. S. A. 142 of 1870.

5. *Sudder Decisions* 1857, p. 121 ; *Sudder Decisions* 1859, p. 169 ; *Ali Husain* v. *Nilakanden* (1863) 1 M. H. C. 356 ; *Ambu* v. *Ramen* (1886) I. L R. 9 Mad. 371 ; *Kanharankutti* v. *Uthotti* (1890) I. L. R. 13 Mad. 490.

6. (1901) I. L. R. 24 M. 449.

7. (1907) I. L. R. 30 M. 388.

called *Veppu* in Palghat [1] *Palishamaduku* in Nedungad and Walluvanad Taluks. Other names are *Vanimadaka* and *Nir ozhikka otti*. The last was the subject of consideration in *Ryru Nambiar* v. *Kanara Kurup* [2] and their Lordships held that it was redeemable in the absence of clear evidence of usage to the contrary. *Mattotti* is a variety of this tenure that was considered in *Keeran Avulla* v. *Chandra Sekharan Nambudiri* [3].

187. *Panayam* is the word for a mortgage. If used simply or in connection with *choondi* or *thodu*, it means simple mortgage [4]. If usufructuary it is called *Karipanayam* or *Kaivasa Panayam* or *Kozhlu Eraka Panayam*. If no period is fixed it is redeemable at any time.

188. *Kettiyadakam* is described by Major Walker as usufructuary mortgage, the mortgagor remaining in possession till he makes default in payment of interest on which event the mortgagee may enter ; the profits after satisfying interest will bear the same interest as the mortgage and may be set off against the principal. *Udurutti Panayam* is usufructuary mortgage where both principal and interest is paid out of the usufruct.

189. *Perumartham* approximates closely to *otti*. It is found in Palghat and Taliparamba. It is defined in *Shekhari* v. *Mangalam* [5], as a mortgage under which when the mortgagor redeems the mortgage, the mortgagee is entitled to be paid its market value at the time of redemption. It is also known as *Alukiya Attiper* (Græm's Glossary). In the Sudder Court Proceedings it is stated that in other respects its incidents are the same as those of *otti*. Mr. Moore however says that it does not carry necessarily the right of pre-emption. Deeds of this kind are in use at Palghat and Temmalapuram.

1. *See Vasudevan* v. *Keshavan* (1884) I L. R. 7 Mad. 309.
2. (1921) 42 M. L. j. 350.
3. (1890) 1 M. L. J. 485.
4. *Ryrappan Nambiyar* v. *Raman Nambiar* (1917) 33 M. L J. 679.
5. (1876) I. L. R. 1 Mad. 57.

190. The incidents of *Keividuga otti*, were the subject of consideration in *Kundu* v. *Impichi* [1], and it was held that it was redeemable on payment of the amount originally advanced contrary to the statement in Walker's Report and Græm's Glossary. Their Lordships opined that what is given up by the mortgagee in this transaction is the power of transferring the property to a third party. Should the mortgagee refuse to advance the amount, the landlord may pay off the mortgage and re-assign the property to another. This was the view taken in the Sudder Court Proceedings.

191. *Otti Kumpuram* is a charge for further advances made by the *ottidar* which the mortgagor undertakes to pay along with the *otti* amount. It bears the same relation to *otti* as *puraukadan* to *kanom*.

192. *Nirmudal, Jenma Panayam*, and *Attiper* mark the next successive stages in the deprivation of the jenmi's interest, *attiper* being the transfer of the entire proprietary right. *Nirmudal* is the last redeemable disposition of property. It is said to derive the name from the fact that it is a transfer of all but the water right. *Kudimanir* is stated by Mr. Moore to mean the same thing. But in Gream's Glossary the latter is treated as an irredeemable tenure and is described as a transfer to a man of low caste, the terms and the formalities being the same as those of *attiper*. It is in fact a grant of *kudima jenm*. In executing *jenmapanayam* the landlord relinquishes the power to redeem his land and nothing is left to him but a nominal proprietorship. He cannot sell the proprietary right to any but the *jenma panayam* holder. In S. A. 417 of 1897 it is stated that according to the latest authorities it is irredeemable but whether it is so would depend on the terms of the document and not on the name. The last three tenures are said to prevail in the neighbourhood of Calicut.

1. (1884) I. L. R 7 M. 442.

193. The customary law of Malabar recognises irredeemable tenures partaking of the character of mortgages as for instance, irredeemable *kanoms* or *saswatoms* [1]. On the principle already referred to, viz., that where a period is fixed, the mortgage is not forfeited by denial of title, these mortgages also are not forfeited by denial of title. The doctrine of clog on the equity of redemption does not seem to be recognised by Malabar Law any more than the Hindu Law. *Peruartham* and *jenma panayam* mortgages involve a gross breach of this doctrine. *Saswatoms* and *peruarthams* before 1858 would not be affected by the rule. Subsequent transactions would [2]. It was held in *Gopalan Nair* v. *Kunhan Menon*[3] which has been followed in *Raman Nayar* v. *Kannoth* [4] that the rule does not apply to mortgages executed after the Transfer of Property Act. This view is based on S. 98 of the Transfer of Property Act which allows the incident of anomalous mortgages to be determined by the contract and in default by local usage. It must however be rejected in view of the recent judgment of the Privy Council *Sherkhan* v. *Shetswami* [5] where it was held that S. 98 does not protect clauses that operate as a clog on redemption. An irredeemable mortgage is an obvious contradiction in terms. Instead of juggling with the term mortgage, the preferable way is to look upon those transactions as distinct from mortgages and having justification in the customary law of the country.

194 There are other tenures partaking of the character of leases which are also permanent. *Anubhavom* or *saswatom* seems to be generic names for such leases. They mostly involve an element of service. They are either grants for past service or they are for future service or for both. *Jenmakozhlu* is said in Græm's Glossary to be analogous

1. *Raru Nair* v. *Vishnu* (1910) 8 M. L. T. 234 ; *Raman Nair* v, *Kunhi* (1915) 2 L. W. 941 ; *Gopalan Nair* v, *Kunhan Menon* (1907) I. L. R. 30 M. 300.

2. *Neelakandhan Nambudripad* v. *Ananthakrishna Ayyar* (1906) I. L. R. 30 M. 61.

3. (1907) I. L. R. 30 M. 300.

4. (1915) 2 L. W. 941.

5. (1921) 30 M. L. T. 220.

to *mulgeni* in Canara but as stated in the Sudder Court Proceedings, even that may involve some idea of service. If the grant is to a Brahmin it is called *Santhathi Brahmaswom*. If to a high class non-brahmin it is called *anubhavom*; if to a lower class *adima* or *kudima* or *adimayavana* or *kudima jenm* or *kudimanir*. *Anubhavom* may be of the land or may consist merely of a permanent rent charge. Where it is the latter, the transaction would be a composite of a *kanom* and an *anubhavom* and would be redeemable leaving even on redemption the right to a rent charge in the tenant. *Vythilingam Pillai* v. *Kuthiravattath Nair* [1] affords an instance of *anubhavom* of a portion of the rent. Reservation of a fixed rent to the grantor and the grant of the rest as *anubhavom* would indicate that land is the *anubhavom* [2]. In *Krishna Iyer* v. *Gopalan Nair* [3] it was held that where it is clear that the *anubhavom* is the land, the tenure is permanent and a subsequent reference to a portion of the rent as *anubhavom* may be explained as referring to a fixed allowance to be enjoyed by the grantee in perpetuity though the gross rent may be varied according to the custom. This seems to be an impossible position. There is no invariable custom by which the gross rent can be determined in such cases and the transactions would fail for want of certainty. Where the grant is for the life of the grantee, it is called *anubhavom*. Where the tenure is one for service in connection with temples it is called *karaimkari* or *karaima*. Where in addition to doing service, the tenant is to produce a certain quantity of rice for *naivedyam* or offering to the deity, it is called *arijennam*. The inferior temple servants are said to hold land on *kazhagom* tenure. *Vagola* is also a kind of irredeemable tenure [4]. *Achandrarkam*

1. (1906) I. L. R. 29 M, 501.
2. (1906) I. L. R. 29 Mad. 501; *Puther Tarwad Karnavan* v. *Kumaran* (1917) 43 I C. 379.
3. (1915) 32 I. C. 982.
4. *Kunhunni Nair* v. *Koma Panikkar* (1891) I M L. J. 659.

and *anandiravakasam* are other kinds of tenures that have come before the courts. Questions have come up mainly with reference to the right of resumption on failure of heirs or denial of title and on alienation. Some general observations seem to be pertinent on these questions. On examination of these various tenures it will be found that the same nomenclature so often covers really different kinds of transactions. An *anubhavom* may be a grant for past service or it may be for future service. In the one case, it would be in the nature of a gift ; in the other case, it would be in the nature of a lease. Again, a *kudima* grant may be actually a purchase or it may be a service grant pure and simple. Similarly with *karaumkari*. A general statement that all these tenures are resumable on alienation or extinction of heirs or on denial of title must in the nature of things be inaccurate and much confusion might be avoided by keeping this fundamental fact in mind. What is a pure service tenure may be forfeited by denial of title and may be resumable on failure of heirs or even on alienation. What is a simple lease may be resumable on the first two grounds and not on the third. A purchase or a gift may not be resumable at all. A tenure may be said to be inalienable and yet alienation may not give the landlord the right to resume. Nor can inalienability be presumed [1].

195. *Anubhavom* is described in Grœm's Glossary as a gift of land as reward for services performed and it is stated that the holder cannot be dispossessed and the right is hereditary but that on default of heirs it reverts to the jenmi and that on each succession, the jenmi is entitled to *purushantaram* or renewal fee. The last however was found against in *Manavikrama* v. *Rama Pattar* [2]. In the Sudder Court Proceedings it is stated that this tenure is sometimes granted for the performance of future services and that the tenant

1. *Zamorin of Calicut* v. *Sama Nair* (1919) 38 M. L. J. 275.
2. (1897) I. L. R. 20 Mad. 275.

cannot be ejected except where there are conditions imposed and the grantee fails to fulfil them. The grantee's right is said to be only the right of enjoyment and that he cannot alienate his title [1]. To the same effect is Sir Charles Turner in his minute. In the last case, it has been held that *anubhavom* comes to an end on alienation following *Achuta Menon* v. *Sankara Nair* [2], which must be taken to be incorrect having regard to the decision in *Ayyakutti* v. *Krishna Patter* [3] as to *Adimavavana* and *Santati Brahmaswom* where it was held by a Full Bench of five Judges that *Adimayavana* and *Santati Brahmaswom* tenures are not resumable on alienation. Similarly in S. A. 976 of 1913, the permanent tenure known as *anandiravakasom* was held not forfeited by denial of title.

196. *Adima*, *Kudima* simply or *Kudima Jenm*, and *Adimayavana*. The tenure thus differently described is stated in Græm's Glossary to be a grant to an *Adiyan* or slave. An actual sale even to a low caste man took this form as he is not competent according to the socio-legal ideas of Malabar to own *Jenm* right. It was sometimes a free gift to a vassal. It is said to revert to the grantor on failure of heirs and also if the *kudiyan* takes part with the enemies of the patron. In the Sudder Court Proceedings, it is said that the grant is also made for future services. Land bestowed as a mark of favour, it is stated therein, cannot be resumed at all but grant for future services may be resumed on neglect to perform the duty if the non-performance involves the necessity of employing another. The non-payment of annual fee reserved is not a ground. In *Teyyan Nair* v. *Zamorin of Calicut* [4] the nature and incidents of

1. *Theyyan Nair* v. *Zamorin of Calicut* (1963) I. L. R. 27 M. 202; *Vythilingam Pillai* v. *Kuthiravattath Nair* (1906) I. L. R. 29 M. 501 and *Kunhi Krishna Menon* v. *Kunhi Kuttan* (1914) 27 I. C. 10.

2. (1911) I. L. R. 36 M. 380.

3. (1922) M. W. N. 192 : 43 M. L. J. 1 (F.B.)

4. (1903) 27 M. 202 ; *See also Vythilingam Pillai* v. *Kuthiravattath Nair* (1906) I. L. R. 29 M. 501 and *Venkatagiri Pattar* v. *Zamorin of Calicut* (1917) I. L. R. 40 M. 923.

adimayavana have been considered. In *Venkatagiri Pattar* v. *Manavikrama* [1] it is stated that the incidents of *anubhavom* and *adimayavana* are identical. But this proposition is demurred to in *Zamorin of Calicut* v. *Sanu Nair* [2]. The rights of the grantee under *kudima* grant are so substantial that mere assertion that the grantee possesses the jenm right does not amount to a denial of the jenmi's title [3]. In *Raman Nair* v. *Mariyomma* [4] it has been further held that *kudima* is not forfeited by denial of title when it is a grant for past services. In A. S. 595 of 1878 *adima* and *anubhavom* are both described as leases and irredeemable so long as the land remains in the grantee's family. This was followed in S. A. 569 of '89. Non-performance of services which have become unnecessary does not give the grantor a right to resume [5]. The marginal note to the Sudder Court Proceedings makes this tenure inalienable but there are no words to that effect in the body of the Proceedings. *Kudima* for future services has been held resumable on alienation if it amounts to a refusal to perform service [6].

197. *Jenma Kozhlu* is stated by Graeme to answer to *mulgeni* in Canara with a fixed rent which cannot be raised and the proprietor cannot remove the tenant. It prevails in some few places in the Northen Division of Malabar. *Jenma-kozhulu and Karamkari* are treated together as identical tenures in the Sudder Court Proceedings. The propriety of this treatment is questioned in *Zamorin of Calicut* v. *Sanu Nair* [2]. It was held in S. A. 495 of 1869 that this tenure reverts to the grantor on failure of heirs.

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1. (1917) I. L. R. 40 Mad. 923 . 32 M.L.J. 212.
2. (1919) 38 M. L. J. 275.
3. *Thankunni Achen* v. *Manchu Nair* (1914) 2 L. W. 102.
4. (1919) 43 M. 480 ;
5. *Madhavan* v. *Nangiar* (1891) I. L. R. 15 Mad. 123.
6. *Raman Nair* v. *Mariyomma*, (1919) I. L. R. 43 M. 480.

198 *Karamkari* is described in the Sudder Court Proceedings as the transfer in perpetuity of the right of cultivation. Where the proprietary right is vested in a pagoda, the grant will be for future services. The tenant in North Malabar has only a life interest. In the South, it is heritable but reverts on failure of heirs to the grantor. Except where the land is granted for special services a rent is reserved. There is no right of resumption on the ground of non-payment in the absence of a special clause to that effect. In *Achuta Menon* v. *Sankaran Nair* [1] it was held that the grant was resumable on alienation. In that case, the document itself prohibited alienation. A contrary opinion is expressed in *Zamorin of Calicut* v. *Sanu Nair* [2] and the evidence as to usage in the case did not support inalienability or the right to resume on that ground. The subject must be taken to be concluded by the decision of the Full bench above referred to [3].

199. *Karaima* grant is not liable to be resumed so long as the grantee performs the service. An action of ejectment may be maintained if the grantee has neglected to perform his duty and it has become necessary to employ another or that he has set up proprietary claim in subversion of the right of the temple (Sudder Court Proceedings 1856). *Karaima* right has been held to be unsaleable in S. A.No. 120 of 1867. The lands are inseparable from the office and on failure of heirs, may be resumed [4]. Where a family has become divided till all the branches become extinct, it cannot be resumed [5]. So long as the grantee is ready and willing to perform the service, it cannot be resumed [6].

1. (1911) I. L. R. 36 M. 380 ; See also *Sankaran Nair* v. *Ramaswami Pattar* (1914) 2 L. W. 155.
2. (1919) 38 M. L. J. 275.
3. *Ayyakutti* v. *Krishna Pattar*, (1922) M. W. N. 192 ; 43 M.L.J. 1 (F.B.)
4. *Narayana* v. *Vasudeva*, S. A. 850 of 1881.
5. S. A. 1879 of 1919.
6. S. A. 471 of 1880 ; S. A. 254 of 1880.

200. There are not many inams in Malabar. The few that there are, are either personal or subsistence grants or endowments for religious or charitable institutions. They consist mostly of assignments of revenue, the only exception being the lands granted to the Quilandy Tangal for the upkeep of the Quilandy Mosque and caravensarai.

(b) Canara Land Tenures.

201. As has been already stated, the tenure that corresponds to *Jenm* is called *Muli* in Canara and the holder of the tenure is called *Mulwargdar*. The position of the *mulwargdar* with reference to Government has been defined in *Vykunta Bapuji* v. *The Government of Bombay* [1] which finally established that the Government had the right to enhance the assessment on the land. The estate of the *mulwargdar* is known as *warg*. The word is derived from the sanscrit word *warga* meaning leaf, having been originally used for the leaf accounts kept by the revenue authorities. The lands that constituted the *warg* were not necessarily adjacent but might be situated at a distance from each other and even in different villages [2]. Wargs were of two kinds : *Muli* and *Geni* and these were classified again as *Kadim* and *Hosagame* according as they were formed before or after the commencement of the Company's Government [3]. *Geni* or *Sirkar Geni wargs* are estates which escheated to Government by lapse of heirs or by abandonment by proprietors. The position of these was originally that of lessees. During the early years of British administration, efforts were made to induce people to come forward to take up the *muli* rights of these lands, formal title deeds called *mulpattas* being granted on favourable terms conveying to the grantee full proprietary or *muli* rights within the specified boundaries and they were eventually offered to all tenants on sirkar *geni wargs*. Few of the *geni wargdars*

1. (1875) 12 Bom. H. C. App. 1. at 106.
2. *Secretary of State* v. *Krishnayya*, (1905) I. L. R. 28 M. 257 at 278.
3. *Sturrock's District Manual*, p. 118.

applied for *mulpattas*, in all only about 893 *mulpattas* having been issued. Ever since 1834, the position of the *geni wargdar* has been regarded the same as that of the *mulwargdar* and he has been so treated at the recent settlement. *Hosagame wargs*, as the word indicates consist of grants made by the Government recently from immemorial waste land to the occupiers or cultivators of such land. The tenure of the *hosagame wargdar* is exactly the same as that of the *mulwargdar* except that *kumki* privileges, to be explained later, are not conceded to such *wargs* formed after Fasli 1276.

202. Early tradition which in this respect corresponds with Manu's rule, assigned a sixth share of the produce as the share claimed by Government till 1252 A. D. when a local prince added about ten per cent to it by directing that the Government share should be assessed in rice thus throwing on the landholder the cost of removing the husk. The arrangement lasted till 1336 A. D. when the Vizianagaram king Harihara Raja's minister published a settlement manual which took twelve times the seed as the average out-turn and distributed the produce thus —7 to the landlord, 15 to the cultivator, 5 to the Sirkar, 1 to temples and 1½ to Brahmins, the State collecting the temple and Brahmin share. The assessment thus fixed remained unaltered till 1618 when the Bednore family who then ruled Kanara imposed an additional tax of 50 per cent. The Vizianagaram assessment with the Bednore addition used to be called the *Rekha*, shist or standard assessment and the subsequent imposts by Hyder and Tippu as the *shamil* or extras. Sir Thomas Munro settled the assessment on the basis of the amounts actually collected, disregarding some of Hyder and Tippu's additional imposts which were in fact never collected. He recommended certain further reductions which were however not made. In 1817, the Board of Revenue directed a settlement on the basis of average collections. The assessment so arrived at was known as the

Tharao or *sarasari* which was in force from 1819 till the recent settlement, though certain concessions were made in favour of individual proprietors. Such estates as were considered able to pay the full assessment were known as *Bharti*; those that were unable were called *Kambharti*. Lands washed away by diluvion come under this class. For several reasons, the assessment was very unequal. For one thing there were no proper accounts. The *Shanabhogs* or curnums under the Vizianagaram administration used to maintain black books known as *Kaditha* accounts which were not only registers of public revenue but also of transfers of land among individuals. The use of these registers was prohibited in Hyder's time. Thereafter, the accounts became hopelessly disorganised and the word of the *shanabhog* became final. Though the Vizianagaram assessment was on the seed area or *Bijwari* basis, the actual distribution of the assessment rested largely with the local poligars and shanabhogs. Though the *warg* was the unit of assessment, till 1819 the Government used to permit parties at the time of buying or selling portions to apportion the assessment as best suited their own convenience. As this was found to be one of the causes of inequality, the Government declared in that year that disproportionate apportionments did not bind them. But subject to this rule subdivisions on the basis of apportionment by parties continued up to the settlement and the shares of assessment payable by the different "*Kudutaledars*," as payers of assessment are called, were entered in the village accounts and a register of transfers or *kudutales* was maintained in the Taluk office. The position of the *kudutaledar* is the same as that of a pattadar or joint pattadar in other districts of the Presidency. When a portion was sold off for arrears of revenue it used to be formed into a new *warg*. There were no records of the boundaries and extent of *wargs*. At the commencement of the British administration an account known as the *Durmati chitta* was prepared by the village officers for each *warg*

showing the *Bijwari* or seed area, the assessment due thereon and the rent produce or *hutualli* with occasionally other particulars. The entries in these accounts are stated to be notoriously inaccurate. When the *tharao* assessment was introduced another chitta was prepared from the old accounts which is called the *sarasari chitta*. There was a question for some time whether the Government had not pledged itself not to revise the *tharao* assessment. In 1880, the Government of Madras had stated that there was such a pledge but on a direction by the Government of India to reconsder the question in the light of judgment of the Bombay High Court in *Vaikunta Bapuji* v. *Secretary of State*[1] they found out that the pledge if any was given by the Collector and Board of Revenue but that it had not the sanction of thed Government. So it was settled that in South Canara also there should be survey and fresh settlement and in pursuance of the same settlement took place in 1901--03.

203. *Neithirge* and *Ghartherige* or land tax and house tax were terms used for the assessment paid for Government house sites built upon in towns. The tenure hardly differed from *mulı* except that such holdings had no *kumaki* right. In theory the *Ghartherige* alone conveyed proprietary right. *Hakkal* was the name given to fugitive cultivation on Government waste land. If on *kumaki* land, such cultivation was not charged but on Government land it was charged at some low rate. *Kumri* is the name given to the system of cultivation carried on Government forest land by felling and burning patches. The cultivation was temporary but the name is in some places applied to cultivation carried on in places where there has been a permanent clearing, the name indicating the origin. *Kumri* was of two kinds, *Sirkar Kumri* and *Warg Kumri* according as the dues were paid to Government direct or to landholders who paid a small assessment to Government. Orders were issued in 1860 remitting *warg kumri* assessment and prohibiting *Sirkar kumri* culti-

1. (1875) 12 Bom. H. C. Appx. 1.

vation except in such locality as the Collector considered necessary. An exception was also made with regard to *warg kumri* in the Bekal maganes of the Kasargod Taluk where it had become a firmly established practice and *kumris* were bought, sold and mortgaged as freely as any other holdings. The use of the word *kumri* is taken as the clearest indication that the land is Government land [1].

204. In the early days of British administration it was held by the Board of Revenue as well as by Sir Thomas Munro that except in the case of unclaimed waste and escheated estates, the Government had not any pretensions to proprietary rights [2] and all the earlier administrators treated a large portion of the waste and forest lands as the private property of *wargdars*. This view was gradually modified. In 1848 Mr. Blane the new Collector of Canara in his report elaborated the present theory, first propounded by Mr. Maltby in 1839. The classification of waste lands into two classes (1) lands which have fallen out of cultivation, (2) immemorial waste lands called "*Kumaki*" lands or lands allowed to assist in the cultivation, being intended to afford to the ryots the means of procuring leaves from the brushwood and jungles growing on them as manure for their field and to furnish grass as fodder for their cattle. He was of opinion that the only difference between the manner in which such lands were held in Canara and elsewhere was that whereas in other districts it was held in common here it was divided and enjoyed in separated portions. The ryots he said were claiming instead proprietary rights in them. To the former class of waste lands or *warg Banjar* lands, he admitted the right of individuals but not to the latter class. The *nettikat* crest of the hill dividing the valleys formed the natural boundary of the holdings of the cultivations on each side of it and the *nettikat* was given as the boundary of estates in *mulpatta*

1. (1879) *Secretary of State* v. *Krishnayya* (1905) I. L. R. 28 M. 257; *Bhaskarappa* v. *Collector of North Canara* (1879) I. L. R. 3 Bom. 452 at 552.
2. *Bhaskarappa* v. *Collector of North Canara* (1879) I. L. R. 3 Bom. 452 at 587.

grants from Native Princes and old documents. Mr. Blane as already stated questioned the proprietary right of the individuals to such lands and even the *kumaki* right admitted by him was subsequently limited to 100 yards from *warg* land. The originator of the 100 yards' rule was Mr. Harris who in 1823 called for a list of Government forests and directed at the same time that to estates which had no forest land attached to them, 100 yards should be assigned as *kumaki* from the Government forest adjoining them. A uniform hundred yards rule was embodied in Rule 8 of the Forest Rules of 1864. The right of the *mulpattadar* to the waste land included in his patta was upheld by the Bombay High Court in *Bhaskarappa* v. *Collector of North Canara* [1] and the position has been accepted by the Government. The subject has been elaborately considered in two decisions in *Bhaskarappa* v. *Collector of North Canara* [1] *and Secretary of State* v. *Krishnayya* [2] and it has been laid down that the rule prevailing in Malabar that all land is private property does not apply to Canara and that the presumption is that immemorial waste land other than that comprised within *mulpatta* boundaries and cultivated land which has gone out of cultivation belong to Government and also that the mere fact that such land has been included in sale deeds affords little or no evidence of the proprietary right of private individuals. Though Bekal Taluk once formed part of Malabar, their Lordships did not find enough justification on the evidence to apply the Malabar rule [3].

205. The *kumaki* privileges recognised at present consist in the exclusive right to take leaves for manure and certain classes of trees and timber for agricultural and residential purposes. Trees are divided into two classes—classified and unclassified. The *wargdar* may cut down for the purposes specified all the unclassified trees and certain specified classified trees. They may

1. (1879) I. L. R. 452 at 554.
2. (1905) I. L. R. 28 Mad. 257.
3. S. A. 2252 of 1917.

cut down the remaining classified trees for the purpose specified after taking out a permit from the Government. (See rules under the Forest Act) But these privileges are not easements but amount to mere license at the sufferance of the Government and terminable at their pleasure [1]. Under the Darkhast rules, waste lands are not assigned on Darkhast without the consent of the *wargdar* as possessing *kumaki* privileges. He has also a preferential right to the assignment of these lands. An assignment in contravention of the *Darkhast* rules as to preference does not affect the validity of the grant. [2] In so far as they are recognised, these *kumaki* privileges are in the nature of quasi-easements and are not transferable apart from the land to which they are appurtenant. [3] The holder of the *kumaki* privileges cannot in the eye of the law be regarded as being in possession and an action for possession cannot be maintained by him. An injunction may be obtained by him. However if he is actually in possession enclosing the land, there is no reason why he should not sue a trespasser for possession. A mortgagee obtaining *kumaki* land on Darkhast in his capacity as mortgagee or by virtue of his possession as mortgagee will be bound to hand it over to the mortgagor at the time of redemption [4], that is on the principle of S. 90 of Trusts Act. A mortgagor not in possession will not be similarly barred [5]. The assignment on darkhast of a land though included in the mortgage cannot be regarded as an accretion to the holding. For the same reason, where a tenant acquires adjoining land on Darkhast [6], especially when he acquires it in opposition to the landlord

1. *Nagappa* v. *Subbu* (1892) I. L. R. 16 M. 301 ; *The Secretary of State for India* v. *Krishnaayya* (1905) I. L. R. 28 M, 257.

2. *Subbaraya* v. *Krishnappa* (1888) I. L. R. 12 M. 422.

3. *Matilda Fernandez* v. *Alex Pinto* (1912) 15 I. C. 278.

4. *Meloth Kannan Nair* v. *Kammaran Nair* (1914) M. W. N. 231 : 1 L. W. 102 : 22 I. C. 609.

5. *Kodi Sankaran Bhatta* v. *Moidin* (1918) 35 M. L. J. 120.

6. *Kunthu* v. *Dasa* (1914) 26 I. C. 376;S. A. 186 of 1912;S. A. 1890 of 1920

assignment by the Government of lands within the holding of a tenant operates as a termination of the tenancy and the tenant thereafter is not estopped from contesting the landlord's title nor the landlord of the tenant's [1]. No doubt there is a presumption which has been held applicable to India that when the tenant encroaches on the neighbouring waste land he does so for the landlord also. This rule has been applied in some cases to the tenants making encroachments and getting assignments from the Government. But the legitimacy of the reasoning may well be questioned as the rule above referred to only lays down a presumption and the presumption must be taken to be rebutted when the application for Darkhast, that is to say for assignment as proprietor to himself, is made by the tenant. In the Amarasullia maganes of the Uppenangadi Taluq the corresponding right to *kumaki* is known as *Bane* which are however not necessarily adjacent to the warg lands.

206. The tenures of Canara are not as complicated as those of Malabar. The ordinary lease known in Canara is *chalgeni* or precarious lease, the term lease is known as *Videgeni* and permanent lease as *mulgeni*. The one respect in which they approximate to the tenures of Malabar is that the tenants are entitled to the value of improvements effected by them before they are evicted. *Chalgeni* tenants were held entitled to the value to improvements in S. A. 452 of 1870 and in *Venkatramanayya* v. *Srinivasa Rao* [3], and the rule has been recently affirmed in *Ramappa* v. *Abdulla Beari* [4]. *Mulgeni* tenants were similarly held entitled on eviction on the ground of forfeiture by denial of title [5]. As there is no statutory enactment prohibiting contracts restraining the right to claim improvement it is open to

1. *Subbaraya* v. *Krishnappa* (1888) I. L. R. 12 M. 422 ; *Narain Rao* v. *Abbus Sahib* (1914) 28 M. L. J. 44.
2. Fifth Report, Vol. II p. 471.
3. (1882) I, L. R. 6 M. 182.
4. S. A. 1386 of 1917 (1920) 41 M. L. J. 127.
5. *Nagappa* v. *Venkat Rao* (1909) I. L. R. 24 M. 265.

parties to exclude the usage [1]. The right is subject as in Malabar to a set off in favour of the landlord for arrears of rent, compensation for trees unlawfully cut or other kinds of waste [2]. Being in its nature an inchoate right, it cannot be attached [3]. *Arwar*, *Udarwar* or *Bhogyo* is the name given for usufructuary mortgage. The only point of difference between the incidents of these and the ordinary usufructuary mortgage seems to be that the mortgagee is allowed the value of improvements by usage. By improvements is understood any work beneficial to the property or in other words that which a reasonable owner would have consented to [4]. The effect of the Transfer of Property Act on the usage has not been considered in this case, possibly because the mortgage was one executed before the Transfer of Property Act. The Act does not preserve usage except with regard to anomalous mortgages. Even so, it would seem to be enforceable as an incident annexed to the contract which may be enforced. The rule as to payment of improvements applies only to agricultural leases. It does not apply to leases of building sites in towns. In S. A. 423 of 1919 it was held that the tenant in such cases could only remove the superstructure and time was given to him by the decree to remove the same. *Yadurundi Kriyachit* is literally sale with a counter agreement. In legal terminology, it may either be a sale with a right of re-purchase or a mortgage by conditional sale. *Adavu* or *Thoradavu* is simple mortgage. These transactions do not differ in their incidents from similar transactions elsewhere. It has not been decided in any case whether a mortgagee by conditional sale is entitled to the value of improvements effected by him. In the great majority of cases, it will be found that provision is made in the document itself for

1. S. A. 1386 of 1917.
2. S. A. 500 of 1898.
3. S. A. 376 of 1917.
4. *Daramma* v. *Mariamma* (1894) 24 M. L. J. 397.

payment. It will probably be found that even in the absence of such a provision, he is entitled to it by usage. The word *otti* is sometimes used in Canara for usufructuary mortgage but pre-emption is not an incident of such mortgages [1]. *Chalgeni* is described in the District Manual as tenancy at will. This does not seem to be accurate. The lease deeds that are taken which are all called *chalgeni* chits purport to be for one year and if it so happens that the tenant holds over and pays rent, his position would be that of a tenant from year to year. He would then be entitled to a reasonable notice to quit. What is a reasonable notice to quit has been the subject of many decisions. We shall confine ourselves to decisions in cases from the District. In *Abdulla Rawutan* v. *Subbarayayyar* [2] (not a Canara case) it has been held that *prima facie*, 6 months' notice ending with the year of the tenancy provided by the Act was the reasonable notice required. In *Subba* v. *Nagappa* [3] a finding was called for as to whether the notice given in the case viz., a month's notice ending with the *Vishu sankranti* which is the season for changing tenants was sufficient notice. It was held that the notice given was quite sufficient. On the other hand it was held in S. A. 715 of 1901 that a three months' notice was insufficient. In S. A. 942 of 1887, where the tenant had refused to quit even if more notice was given, fifteen days' oral notice was held sufficient. In S. A. 155 of 1906, a four days' notice alone was given and of course, held insufficient. In S. A. 1393 of 1918, a notice given on 4-12-1913 to quit on 13-4-1914 being the *Vishu sankramana* day was held sufficient. In this state of authorities, the only safe course seems to be to give a six months' notice ending with *Vishu sankramana*. Denial of title before date of suit dispenses with necessity for notice to quit. But denial in the course of

1. *Soukaram Mussad* v. *Ussain Haji* (1907) I. L. R. 30 Mad. 388.
2. (1878) I. L. R. 2. M. 346.
3. (1888) I. L. R. 12 M. 363.

suit is insufficient. [1] Though this is the ordinary tenure on which land is held, *mulgeni* leases also are common. From this circumstance a course of decisions that has arisen which hold that there is no presumption in South Canara that a tenure is *chalgeni* or *mulgeni* and the burden would lie on the person setting up either kind of tenure to prove that it is so [2]. In *Kittu* v. *Channamma* [3] the tenant was in possession for over 80 years paying a uniform rent and there was no evidence as to the origin of the tenancy. It was held that in the circumstances the presumption was that the tenure was *mulgeni*. In *Raghavacharya* v. *Secretary of State* [4], the tenant was in possession for over forty years and was setting up *mulgeni*. Even so, when there is proof of fluctuation of rent, the inference is that the tenure is *chalgeni* [5]. These are propositions that one may not have to take exception to. The proposition which is open to serious exception is the general proposition as stated above which has been laid down in the case given in the foot note to 30 M. 528 and accepted without reserve in the subsequent cases. Leases for a term are common in England though perpetual leases may not be and if the reasoning of the above case is right, in England also the rule ought to have been that the plaintiff should show his right to eject. The rule that all leases are presumed to be leases from year to year is the resultant of two ideas and not one. First, the ownership of the plaintiff being admitted, it is for the defendant, the tenant who tries to derogate from that title, to make it out clearly ; secondly the general prevalance of the tenure in question. Tenancy being admitted on both sides, the effect of the first rule is to reduce it to the prevalent tenure of minimum duration which is tenancy from

1. *Peria Karuppan* v. *Subramania Chetty* (1908) I. L. R. 31 M. 261.

2. *Kittu* v. *Channammah* (1904) I. L. R. 30 Mad. 528 and the case reported as foot note thereto ; *Raghavacharlu* v. *Secretary of State* (1916) M. W. N. 271 ; S. A. 1047 of 1914 ; S. A. 1303 of 1917.

3. (1904) 30 M. 528.

4. (1916) M. W. N. 271.

5. S. A. 1832 of 1908.

year to year. The history of the general presumption will be found well stated in *Venkatanarasimha Naidu* v. *Dandamudi Kottayya* [1]. The rule as to burden of proof has been emphatically laid down by the Privy Council in *Sethuratnam Iyer* v. *Venkatachala Goundan* [2]. There is no reason why that rule should not equally apply to South Canara.

208. *Mulgeni* as said above is the name for perpetual lease. *Kayamgeni* is another word in use to convey the same idea [3]. The use of the word *nigdi* is not sufficiently definite for the purpose [4]. The tenure is by usage not inalienable [5]. A covenant not to assign is good [6] but in the absence of a clause for re-entry the transfer is good [7] and the landlord cannot maintain a suit for possession [8]. After the Transfer of Property Act it may be having regard to S. 108 which makes the right to transfer subject to any contract to the contrary, the landlord may ignore the transfer and proceed against the land as if there has been no transfer [9]. In the absence of accident, surprise or mistake the court has no power to relieve against a forfeiture incurred by alienation [10]. A covenant not to alienate does not include involuntary sale [11]. The Canarese word *Paradhina* has been held not to include a *sub-mulgeni* in *Ramma Prabhu* v. *Srinivasa* [12] nor usufructuary mortgage of a portion possession remaining with the mortgagor [13] nor a sham and collusive transfer [14].

1. (1897) I. L. R. 20 M. 299.
2. (1919) I. L. R. 43 M. 567 : 38 M. L. J. 476 (P. C.)
3. S. A. 182 of 1913.
4. S. A. 805 of 1904.
5. *Tamaya* v. *Timapa* (1881) I. L. R. 7 B, 262:
6. *Venkatraya* v. *Shivrambhat* (1883) I. L. R. 7 B, 256 ; *Parameshri* v. *Vittappa* (1902) I. L. R. 26 Mad, 157 ; S. A. 1070 of 1917.
7. *Seshagiri* v. *Seshamma* (1920) I. L. R. 43 M. 503 : (F. B.)
8. I. L. R. 26 M. 157 ; I. L. R. 7 Bom 262 ; *Madar Salib* v. *Sanna Bawa* (1895) 21 B. 195 ; *Narayan Rasappa* v. *Ali Saiba* (1893) 18 B. 603.
9. *Seshagiri* v. *Seshamma* (1920) I. L. R. 43 M. 503.
10. *Krishna Shetty* v. *Pinto*, (1919) I. L. R. 42 M. 654 F. B.
11. *Subbaraya* v. *Krishna*, (1882) I. L. R. 6 M. 159 ; *Tamaya* v. *Timapa* (1881) I. L. R. 7 B. 262.
12. (1899) 9 M. L. J. 11.
13. S. A. 2337 of 1913.
14. S. A. 483 of 1913.

Where a lease deed had prohibited mortgage, sale and other transfers, it was held that a sub-lease came within the prohibition [1]. Prohibition of a transfer in any way was held to cover a simple mortgage [2] though the word used was *Paradhina* which is really a technical term meaning transfer. In S. A. 1085 of 1894 alienation of a portion was held to come within the prohibition. In *Vittappa Kudva* v. *Durgamma*, [3] it was held that neither the fact that the transfer was to a person in the line of heirs nor a re-transfer would save the lease, but that the transfer of part did not come within the prohibition. Transfer even to another member of the family of the lessee was held to work forfeiture in S. A. 1598 of 1916. A hypothecation of the improvement right of the tenant was held to be tantamount to an alienation of the *mulgeni* itself as to work forfeiture in S. A. 1287 of 1896. An agreement to sell the improvements to the landlord does not amount to a clause for re-entry [4] nor a clause worded thus : " if while without alienating the land I am enjoying it I do not want the land I shall relinquish to you and obtain from you the value of improvements" [5]. An agreement to surrender [6] or that the lease shall be void or that the landlord may give the land to another [7], is sufficiently express. A clause of forfeiture on waste was upheld in S. A. 312 of '83. Even a further provision that on waste, the right to improvements also should be forfeited was upheld in S. A. 620 of '93. As pointed out in *Parameshri* v. *Vittappa* [8], the clause may be one of forfeiture for breach of covenant or it may be a condition ; in either event the lease will determine. In the absence of a clause for forfeiture,

1. S. A. 1477 of 1904 ; see also S. A. 222 of 1893.
2. S. A. 1070 of 1917.
3. (1919) 38 M. L. J. 190.
4. S. A. 483of 13 ; *Parameshri* v. *Vittappa* (1902) I. L. R. 26 M. 157.
5. *Maithi Hengsu* v. *Soma*, (1915) 29 M. L. J. 452.
6. S. A. 1444 of 1905.
7. *Adhiragi Chetty* v. *Billa Tyampu*, (1910) 20 M. L. J. 944.
8. (1902) I. L. R, 26 M. 157.

a *mulgeni* lease does not terminate by reason of non-payment of rent but forfeiture may be expressly provided for in such an event. But the court will ordinarily relieve against forfeiture in such cases [1]. It was held in some cases that the court will not relieve when a period of grace is provided in the deed [2]. But a different view has since been taken [3]. A false plea of discharge and a failure to deposit the money and apply for relief has been held to disentitle the tenant from applying for relief in second appeal [4]. *Ramakrishna* v. *Baburaya* [5] holds the contrary. It has been held in *Vidyapurna* v. *Ragapayya* [6] and S. A. 285 of '14 that though the application for relief is made in second appeal the court may grant relief. In A. A. O. 13 of 1900, the court refused to relieve against forfeiture as the party contumaciously and deliberately withheld payment. Similarly collusion with a stranger to set up adverse title was held to be a ground for refusing relief [7]. Court's power to relieve against forfeiture is not taken away because the terms of the agreement have been embodied in a decree of court [8]. When relief is applied for, even barred arrears should be paid [9]. *Mulgeni* is forfeited by denial of title[10]. An overt act determining the lease before the date of suit is not necessary in

1. *Timmarsa* v. *Badiya*, (1865) 2 Bom. H. C. 66; *Narayana* v. *Narayana*, (1883) I. L. R. 6 Mad. 327.

2. *Naraina* v. *Vasudeva*, (1903) I. L. R. 28 Mad. 389; *Narayuna* v. *Handu* (1901) 15 M. L. J. 210; *Adhiragi* v. *Billa Tyampu* (1910) 20 M. L J. 944; *Mahalakshmi* v. *Lakshmi*, (1911) 21 M. L. J. 960.

3. *Ramakrishna* v. *Baburaya*. (1912) 23 M. L. J. 715; *Appayya Shetty* v. *Mahamad*, (1915) 29 M. L. J. 381; S. A. 2438-2442 of 1913; S. A. 1563 of 1914; 32 I. C. 526.

4. *Narayan* v. *Handu*, (1901) 15 M. L. J. 210; *Mahalakshmi* v. *Lakshmi*, (1911) 21 M. L. J. 960.

5. (1912) 23 M. L. J. 715.

6. (1913) 25 M. L. J. 486.

7. *Nagappa* v. *Venkata Rao* (1900) I. L. R. 24 Mad. 265 and *Kalliani Amma* v. *Chinnan*, (1910) M. W. N. 388

8. *Nagappa* v. *Venkata Rao* (1900) 24 M. 265.

9. *Vasudeva Udpa* v. *Krishna* (1920) I. L R. 44 Mad. 629; 40 M. L. J. 460.

10. *Padmanabhayya* v. *Ranga* (1910) 20. M. L. J. 930; I. L. R. 34 M. 161.

the case of agricultural leases which are not governed by the Transfer of Property Act [1]. The combination of a claim in ejectment for forfeiture with a claim for rent does not amount to a waiver [2]. Waiver by the owner of one moiety does not prevent the owner of the other moiety from enforcing forfeiture. A *mulgeni* tenant may cut down trees grown by him or even spontaneous growth during the currency of the lease [3] but he may not cut down trees existing at the date of his lease [4] though he may by implication be authorized to clear shrubs, etc., in the course of good husbandry. A *mulgeni* lapses on the failure of heirs to the landlord [5]. The tenant cannot surrender the holding at will without the consent of the landlord [6]. Rent is not a charge on the holding [7] unless expressly made so.

209. *Walavargs* present some analogy to *mulgeni*. The literal translation of the word is under *warg*. In other words where the purchaser of a portion of the *warg* instead of having his name entered as *wargdar* continued to pay his portion of the revenue to the registered *wargdar*, he was called a *walawargdar*. That is one meaning of the term [8]. The payment is known in some places as *moggu*; in other places as *volathirwa* [9]. In such a case when the land was entered in the patta of the *walawargdar* at the settlement it was held that the liability of the *wargdar* ceased for the payment and along with it the *wargdar's* right to collect the *volathirwa*. This view of *volathirwa* was not accepted to be exhaustive in S. A. 2034 of 1914.

210. It will be noticed that many of the points referred to above are not peculiar to Canara or Malabar but are the

1. *Korapalu* v. *Narayana* (1913) 25 M. L. J. 315.
2. *Padmanabhayya* v. *Ranga* (1910) I. L. R. 34 Mad. 161.
3. *Krishnacharya* v. *Anthakki* (1915) 29 M. L. J. 314.
4. *Gangamma* v. *Bhommaka* (1909) I. L. R. 33 M. 253; S. A. 2309 of 13.
5. *Secretary of State* v *Shidaramappa* (1919) I. L. R. 42 Mad. 327.
6. *Krishna* v. *Lakshminarayanappa* (1891) I. L. R. 15 Mad. 67.
7. *Padakannaya* v. *Narasimma* (1886) I. L. R. 10 Mad. 266.
8. S. A. 487 to 489 of 1910.
9. S. A. 1494 of 1909.

application of the principles equally applicable to other places. In fact, as was premised at the very start, there is little difference between the tenures elsewhere and in the West Coast. The real differences can be traced to one circumstance, viz., that the tenant or mortgagee is entitled to the improvements effected by him. The rest is a mere question of varying nomenclature.

211. In the district of South Canara, there are no inams in the sense of land held free of assessment. The inam is merely an assignment of revenue. In lieu of the assignment of revenue to institutions cash payments known as *Tasdik* were made from the treasury by the British Government but the system of assignment of revenue is continued to individuals. The two classes of inams are known as pagoda allowances and *jari Brahmadaya* inams. The system of assignment of revenue was not found satisfactory in the working. The Government substituted where the parties desired, the *beriz* deduction system under which the revenue is collected by the village officers and paid over to the inamdars.

APPENDIX A.

List of Castes governed by Makkathayam and Marumakkathayam (according to the Malabar Gazetteers).

Makkathayam.

1. Nambudiris
2. Embrandiris (Ordinary Hindu Law).
3. Pattars (Ordinary Hindu Law).
4. Elayads.
5. Musads
6. Pushpagars. (in some places they follow Marumakkathayam).
7. Chakkiars
8. Theyathu Nambiars (makkathayam as a rule-Marumakkathayam also in some places.)
9. Marars
10. Muttans.
11. Vilakkataravans in the south; in the north, they follow Marumakkathayam.
12. Kaduppattars.
13. Chaliyans (in some places marumakkathayam.)
14. Polluting castes.
    Tiyans in South Malabar.
    Ezhuvans.
    Mukkuvans in the south.
    Tandans
    Walluvars (Fishermen and Boatmen.)
15. Artisan classes
    Kammalans
    Pathinetans
    Tolkurups Vadugans.
    Kancharans
    Vettans or Vettuvens
    Vilkurups Tolvollens
16. Kamsans
17. Mannans in the south.
18. Velans except in extreme North.
19. Panans.
20. Pulluvans or low caste physicians.

21. Aboriginal tribes.

Cherumas.	Parayans.
Pulayas.	Nayadis.
Malesans	Paniyans.

22. Foreigin castes.
Tamil and Canarese Chetties and Goundans.
Kaikolans or Tamil weavers.
Vellalans or Tamil cultivators.
Kuruvas.
Andis.
Pandarams.

Marumakkathayam Castes.

1. Nambudiris of Payyanur Village.
2. Chakkiyar Nambiyar.
3. Purapoduval.
4. Pisharodis
5. Variar (These have a custom of Sarwaswadanam marriage by which the wife is adopted into the family of the husband.)
6. Teyyambodi Kurups and Karopanikar.
7. Kshatriyas.
8. Samantas.
9. Nayars.
10. Taragans.
11. Revaries.
12. Tiyans in North Malabar.
13. Kusavans (Potters).
14. Ottatu Nayars or Tilers.
15. Vanians.
16. Kulangara Nayars.
17. Edeachteri Nayars.
18. Vellutedans.
19. Villakkataravans in the North.
20. Yogi Gurukkals

21. Wyanad Chetties.
22. Paravans (in most parts)
23. Velans (Physicians) add Karuthians in the North
24. Mukkuvans in the south.
25. Vannans (in the north)
26. Moplas in North Malabar.
27. Some aboriginal tribes.
    Kurichiyans
    Malakkars,
    Kasambalans
    Vettuvans.

APPENDIX B.

Castes that follow Aliyasantana.

Bants (Maradika and Nadava and not Parivara) :—who are governed by Makkala Santana or the Ordinary Hindu Law.

Heggades. Goldsmiths (some) Mogers (Fishermen)

Billavars and Halepaiks (toddy drawing classes). Mukkuvans (Marumakkathayam) Madivalas (Washermen) kelasis (barbers) Mappillas (some in Kasargode Taluq follow *Marumakkathayam.*)

Kudiyas or Malekudiyas.

Kumbaras (potters).

Moylis

Sapaliyas.

APPENDIX C.

[The following is the translation of material portions of Bhutala Pandya's Kattu Kattalais. The text is in many places obscure but it is believed that the following substantially brings out the sense of the original.]

The 14 Kattus or rules enacted by Bhutala Pandya for the castes other than Brahmins go under the headings of

Jati Niti, Mana Mariade, Huttu Kattu, Hinde Munde, Hetchu-Kammi, Bali Banna, Ali Uli.

By *Jati Niti* are meant the duties that appertain to each caste.

By *Mana Mariade*, are meant the titles and marks of honor appertaining to the duties of each caste.

Huttu Kattu is the abolition of the Makkala Santan (descent in the line of sons) and the substitution of Aliyasantana (descent in the line of nephews.)

Hinde Munde represent different degrees of superiorities such as distinction of 4, 8, 16 (precedence Pattta and Pattavali (ordination to position as chieftain and honours ncident thereto.)

Hetchu Kammi indicate differences in the honours paid o each caste.

Balibanna apply to those who have no special *stana* (place or mark of honour).

Ali Uli means the devolution of property on death.

Jati niti. The jatis or castes for whom Bhutala Pandya enacted rules are Thuluvaru, Malavaru, and Nayammaru, Masadika, Jains, Harishetti, Pariyaru Kumbara (potters), Devadigaru (temple servant) Saliyaru (weavers) Malekudiyaru, (forest tribes) Panchala, (artisan) Kshowrika (barber) Agasa, (washerman), Halepaika (toddy drawer), Holeya, Unde Koraga (classes of pariahs). Each of these castes shall observe the superiority and inferiority and the rules of conduct appropriate to it and live in amity with the rest.

Mana Mariade. They are (1) stala i. e., honours appertaining to the ownership of certain lands;

(2) Mane or honours attaching to certain families;

(3) arasu, Ballala, Hegde being different grades of chieftainship;

(4) Nama or titles ;
(5) Kirthi or honorary distinctions.

Mula is ownership of lands on which certain Bhuts dwell.

The distinction of 4, 8 and 16 the patta of arasus (position of chieftainship) Pattis (occasional tributes) Pagadies (fixed periodical tributes) shall descend hereditarily, each holder continuing for life.

Hultu Kattu. Bhutala Pandya abolishing the makkala-santhana (descent in the line of sons) and substituting in its place Aliyasanthana (descent in the line of nephews) wrote down this law to that effect in the Madiya Mantapa of the temple of Ananteswar at Jagat (Barkur) and added the penalty that whosoever violated the rule, his family shall be extinct. Bhutala Pandya ordained that only the wife and children shall be subject to death pollution and be participators in the result of good and bad actions, fame and ill-fame and the acts of charity of a man. The santana i. e., the family shall observe only the birth pollution and succeed to the property of the deceased.

Kattalais or special Commandments of Bhutala Pandya.

(1) There shall be no Shubha dhares or auspicious pourings of water through Brahman priests
(2) There shall be no Mahalaya on death.
(3) There shall be no panchakavya and Punya Homa (purificatory ceremonies) with Darbha on births and deaths. On these occasions, Niromalaya Puja, Abishekha Shanti and Samaradhana should, be performed in the name of the deceased and the children that are born, as the case may be.

Hetchu Kattale or observances on special occasions.

When a girl attains age, there shall be the following auspicious marks (a) Nerimantapa i. e., a perpendicular

wooden frame with cloth covering the four pillars and a canopy attached to it;

(b) Nademadi i. e., cloth to walk upon;

(c) Nadechappara-a canopy taken in procession;

(d) Nadevadia-musical instruments music ;

(e) dancing and music.

On occasions of death, there shall be (1) Nelu uppariage i, e., a lofty wooden framework with stories and covered with cloth. (2) Beating of Bheri and Dolu (kinds of drums) (3) Vadya (musical instruments with pare (a special kind of drum played on by pariahs (4) scattering of rice with cries of 'muriyi' 'muriyi' (alas, alas)

Balis are 18 and bannanirtubalis are 4. The bali of the person who has established Balisvira Brahma and lives in the territories of a king who is competent for the Bali is pure. The bali of a person who has not established the Balisvira Brahma or where there is no competent king in the place, is banna kammi i. e., inferior in quality.

Ali Uli or Rules of devolution of property on death.

Children of senior or junior maternal aunts, the eldest male, the eldest female shall stand for ali uli (succession on survivorship) ; the rest shall not be entitled to partition or fixed payment, but should live together in concord. If disputes should arise between the younger and the elder sisters the elder should assign the younger a house with necessaries herself being however responsible for urisiri i. e., good and evil but there shall be no release as between them.

The eldest male alone shall be entitled to places with patta and patti ; the other members have no right thereto during his life time but shall be entitled to succeed on his death.

Balu Budaku, Excepting the wedding present, property, ever so trifling given to a woman by her husband though

with full knowledge, is liable to be resumed by the family. He may however assign to his children by way of gift lands, house, gold, silver, cattle, bullocks, seeds etc. out of his own acquisitions not being acquired by the instrumentality of family property (or not being family property.) Children have thus a possibility of right in their father's property.

Special rules. If, on failure of heirs, a female of the same bali should be brought up, that will amount to the adoption of the girl. There shall be no adoption of a male. In families that have special mana mariades which descend to the family, no sale shall be made nor shall property be given to wife and children on the plea that there are no heirs. If the family becomes extinct without adoption the heads of the families in the order of 4, 8 and 16 shall choose a girl and a boy of another family of the same bali as representative of that family and these representatives alone shall be the heirs and not the wife and children of the deceased.

16 KATTALAIS OR COMMANDMENTS.

1. When Bhutala Pandya was questioned as to how the family governed by Aliyasanthana law is to be continued when the only girl of the family loses her husband he answered that the parents are not, but the maternal uncle and the rest of the family are, competent to give the girl again in marriage. The father and mother-the parents-may not give away the girl with the ceremony of Dhare or pouring water. They are only to touch the Dhare Gindi (the water vessel placed onthe join hands of the couple.)

2. A girl who loses her husband is called a Budhavawthi. If she becomes pregnant before remarriage (presentation of cloth) she may be given in marriage to the person by whom she became pregnant if she is of the same caste ; should the latter be a person of a higher caste, she might be allowed to be kept by him, but if he be of the lower caste she loses caste and the Ballalas may sell her after exacting a fine from the

paramour. If a husband goes to a foreign country leaving a married girl behind, she may be given away in marriage again after five years. If she becomes pregnant she may be allowed to be kept (with a present of ornaments) by the paramour if he is of a higher caste, be married to him, (with a present of cloth) if he be of the same caste, degraded and joined to the caste of the paramour if he is of a lower caste.

4. If after a woman brings forth 3 or 4 children the husband goes to a foreign country, a woman cannot be wedded to another person. If she has connection with a man of equal caste and becomes pregnant, she cannot be re-married. If the man be of an inferior caste she should be excommunicated.

5. If a married woman is to be found to be guilty of adultery, the husband may bring her and deliver her over to the family and she may then be wedded to another person. If the husband neglecting the wife keeps another and does not treat the former properly, the family may recall her from her husband's house and give her in marriage to another; similarly if the husband illtreats the wife by beating and abusing her as he likes, reconciliation may be effected between them three or four times but should there be a recurrence of disagreement afterwards the family may recall her from her husband's house and get her married to another person.

6. If a girl attains puberty and becomes pregnant before marriage such a girl and the person that caused the pregnancy should both be fined and the girl may be placed in the keeping of the person if he be of higher caste and loses caste if he is of an inferior caste.

7. Bhutala Pandya enacts a similar rule as regards an unmarried girl who has attained age that elopes and a married woman that leaves her husband and elopes with a stranger.

9. In respect of Kshatriya girls, the customs of kshahtriya shall be observed. Between Kshatriyas and Brahmins marriage may be performed in the Kaidhare (attended with

the pouring of water) form, if the male be of the same or of inferior caste.

10. As regards Jains the rule is that if he is of the same caste, she may be placed in his keeping but if he should belong to a higher or lower caste, she loses caste.

11. As regards the melvaras, the rule is that if the male be of the same or superior class, she may be allowed to be kept by him, if he be of an inferior caste she cannot be taken into the caste.

12. Bhutala Pandya declared that among the Nayars and Nayammars there is only Kanya Kalyana (ante-puberty marriage) but not Swayomwarams; afterwards girls may be allowed to be kept by persons of the same class or of superior class such as Brahmins.

13. In the caste of Kadambas, if Kumara Ballala the girl may be given to the keeping of a male of the same caste or of the Kshatriya or Brahmin. But if she has connections with a male of an inferior caste she loses caste.

14. Bhutala Pandya declared that among the stanikas and Ambalvasis if the male is not of the same or Brahmin caste but of a lower caste she loses caste.

15. Girls of the Padarthi and Horapoduval castes may be taken into the keeping of persons of the same or superior caste by presentation of cloth.

16. In the case of Arasus (kings and chieftain caste) Brahminical marriage may be performed. As anyatha gift is made to the children of such marriage, marriage may be performed by fixing pillars and placing kumbhas (water pots). If among these kings it be impossible to give anyatha gifts, then it would not be possible to celebrate the marriage in Brahminical forms. Bhutala Pandya declared that Chautas and Bangas have the same rules and auspicious and inauspicious ceremonies as Brahmins. During the auspicious and inauspicious ceremonies of Chitpadi and Nidambur Baltalas the rules of Aliyasanthana people should be observed.

APPENDIX D.

RULES UNDER SECTION 9 OF THE COURT FEES ACT.

MADRAS.

Whereas the High Court is of opinion that the subject-matter of certain suits comprised in the classes of suits mentioned in clauses (b) and (c) of paragraph iv of section 7 of the Court-fees Act 1870, *viz.*, suits for the removal of a karnavan or ejaman or for the enrorcement of a right as karanavan, ejaman or member of a tarwad governed by the Marumakkattayam or Aliasantana system of law or of a Nambudri illom, does not admit of being satisfactorily valued, and whereas by an order in Council, dated the 24th day of January 1903, and numbered 86, Judicial, His Excellency the Governor of Fort St. George in Council has sanctioned the following rules for determining the value of the subject-matter of such suits, the High Court, under and by virtue of the authority conferred upon it by section 9 of the Suits Valuation Act 1887, and all other powers there-unto enabling, hereby directs and orders that for purposes of the Court Fees Act, 1870, and the Suits Valuation Act, 1887, the value of the subject-matter of all such suits and appeals in such suits, instituted or presented on or after the 1st day of March 1903, shall be determined according to the following rules :—

I. The subject-matter of a suit for the removal of a karnavan or ejaman or for the enforcement of a person's right as karnavan or ejaman of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudri illom, shall, for purposes of the Court Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at one-third of the amount at which the same would be valued under the provisions of the Court Fees Act, 1870, if the suit were one brought by a stranger fort he recovery of the whole property—moveable and immoveable— possessed by the tarwad or illom to which the suit relates.

II. The subject-matter of a suit for the enforcement of a person's right as a member of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudri illom, shall, for purposes of the Court-fees Act, 1870, and the Suits Valuation Act, 1887, be valued at the amount at which, if the whole of the tarwad or illom property were by the consent of all equally divided among all the members (including the plaintiff) of the tarwad or illom, the plaintiff's share would be valued, with reference to the valuation of the suit under the Court-fees Act, 1870, if the suit were one brought by a stranger for the recovery of the whole property—moveable and immoveable—possessed by the trawad or illom.

III. In all such suits, the plaintiff or appellant shall state in the plaint or memorandum of appeal, as the case may be, the amount at which he values the entire property of the tarwad or illom and such valuation, unless the Court has reason to believe the valuation is not made *bona-fide*, shall be accepted by the Court. *Notification-Disposal, No. 202 of* 1903, *dated 26th February* 1903, *Fort St. George Gazette, dated 3rd March* 1903, *Pt. II, p.* 368.

MALABAR COMPENSATION FOR TENENTS IMPROVEMENTS ACT.

INTRODUCTION.

In 1852, Mr. Strange, then a Judge of the Sudder Court of Madras, was deputed as a Special Commissioner to inquire into the causes of the Mapilla outrages, and suggest remedies therefor. Exactions by Hindu landlords had been assigned by the Mappillahs as one of the chief causes of these outrages. This view was not accepted by Mr. Strange. He recommended nevertheless that the rules to be observed in the determination of questions relating to land tenures might advantageously be promulgated by the Sudder Court as they had not always been duly attended to by the local courts. The first point about which he wanted a declaration was as to the right of the tenant to retain the land for twelve years with certain reservations such as the duty to renew on the death of the landlord when a Raja, to suffer redemption when he is not prepared to make further advances when required by the landlord, or when rents are not paid. He also suggested a revision of the rules which regulate the rates of compensation for improvements. The Civil Judge of Calicut whose attention was drawn to the remarks of the Commissioner was of opinion that the real root of the evils complained of was to be sought not so much in the neglect by the courts of the local rules which govern the land tenures of the District as in the vagueness of the rules themselves in regard to the various fines leviable by the landlords upon their tenantry and in the very loose way in which the leases of the kind are drawn up. He advocated legislation fixing forms in which such deeds should be drawn up. The Collector of Malabar to whom also reference was made was for

enacting a law rendering compulsory execution by Jenmis of written receipts for everything received by them and prohibiting the collection by them of any assessment or tax not authorised by the terms of their deed. He complained that the rules which regulated the rates of payment for improvements did not provide sufficiently for reimbursement to the tenant with due regard to the increased value of the property.

The Sudder Court in their proceedings dated 13th February impressed upon the subordinate courts the duty to give effect to ancient usages which regulate the relations of landlord and tenant and though they considered a revision of the rules regulating the rates of reimbursement for improvements effected by tenants on lands held by them on kooyakanom tenure so that the rate should be according to the actual value of the products planted by the tenants and not the nominal value fixed by usage which was far below the actual value, would be very desirable, as it was a point which affected long established usage they thought it was inexpedient for the legislature to interfere. In 1854 the Sudder Court at the instance of the Board of Revenue instituted an inquiry into the existing land tenures of Malabar. In 1856, they forwarded the results they had obtained to the Civil Judges of Calicut and Tellicherry calling for decrees and opinions of experienced persons respecting the mutual rights of landlords and tenants. If does not appear that any alternatives were suggested by them. The result of the inquiry was embodied in the proceedings of the Court dated 5th August 1856. These proceedings contributed not a little towards the settling of the law. In 1880, after the Melattur outrage of that year, an anonymous petition was received by Government setting forth the grievances of the agriculturists of Malabar naming eviction in particular as the root of the evil. In reporting on this petition both Mr. Logan, the Collector of Malabar, and Mr. Wigram, the District Judge of South Malabar, agreed that Mr. Strange had attached far too little weight to agrarian

discontent as a cause of the disturbances. On February 5th, 1881, the former was appointed Special Commissioner to inquire into land tenures and tenant rights in Malabar. He prepared an elaborate report which was the subject of consideration by two commissions. He thought that there had been complete misapprehension of the relative position of the jenmi, kanomdar and the tenant. Under the old system, the two former shared, according to him, the state-share of the produce due from the real proprietor, the tenant. He did not fail to recognise however that the old hereditary kanomdars had long ago disappeared and the bulk of the kanomdars then in enjoyment were recent comers. He thought that the cultivators were rapidly degenerating into a state of insolvency. He attributed this result mainly to three crying evils, rack-renting, extortionate renewal fees and inadequate compensation for improvements. Whereas according to the custom, the tenant's share was fixed at one-third of the net produce, competition had in some cases, raised the rent to the whole of the estimated produce after deducting the bare cost of seed and cultivation. Renewal fees which under the old system never exceeded 20 or 25 per cent of the advance had come to be fixed at any sum which the kanomdar could be made to pay by threat of eviction. As regards improvements though in theory the tenant was entitled to be paid the value of all the improvements effected by him, in practice there was great injustice done to the tenant. The improvement rates were fixed according to custom and these varied enormously throughout the district. For the cocoanut alone, there were 74 rates varying from 10 pies to Rs. 14. In North Malabar and the Calicut Taluk the highest rate allowed for the cocoanut in full bearing was As. 8 or about half-year's rent for a good tree. For the areca there were 28 rates, ranging from 1 pie to Rs. 4-8-0 and for the jack tree, there were 45 rates varying between 1 pie and Rs. 40. The practice was to depute commissioners to assess the value of improvements according

to the rates prevailing in the locality and the door was thus laid open to great corruption. In some parts, there was a custom by which the landlord was entitled to a portion of the value of the improvements. The inadequacy of the rates placed a ready weapon in the hands if unscrupulous jenmis, viz., eviction which they used generally for the purpose of raising rents. The remedy suggested by Mr. Logan for these evils was the creation of a statutory class of peasant proprietors with permanent rights of occupancy and to provide by law for the payment of adequate compensation for improvements effected by the tenant. The picture was overdrawn. The inquiry was one-sided and his views were largely coloured by his preconceived notions about the original relationships between jenmi, kanomdar and tenant. The report was subjected to elaborate criticism by two commissions. The first commission, though it did not accept the theory of Mr. Logan as to the original relationship between the jenmi, kanomdar and tenant, recommended legislation more or less on the lines of Mr. Logan. The commission suggested the conferring of occupancy rights on all customary tenants not inferior to verumpattam lessees, who held the land directly under the jenmi continuously for 30 years and 15 years if the land was reclaimed within 30 years. They made provision for the fixing of rents and renewal fees and for the assessment of improvements. They gave the jenmi a first charge for his rent subject only to the state's charge for revenue and reserved to him a power to re-enter in case the tenant persistently neglected to pay the rent or renewal fees, or was guilty of acts of grave insult or annoyance to the jenmis, or wilfully denied his title. They suggested similar restrictions in the case of non-occupancy tenants also. Their recommendations were subjected to a minute criticism by Sir Charles Turner who was then the Chief Justice of Madras. His criticsms were directed mainly against the provisions for the conferring of occupancy rights ; but so far as the award and assessment of compensation he had little to find fault

with. As a result of his criticism, the Government appointed another commission which was asked to report on the best available form of legislation. A bill was prepared by the committee. They considered that the question of adequate payment for tenants' improvements was one on which there was the least difference of opinion, that the desired adjustment of rates could not be secured otherwise than by legislative action and that there was reason to hope that, if fair rates are given in all cases, sufficient check would be placed on the growing practice of eviction. They also considered that the matter was one which should be settled without delay and that there was no object to be gained by making what was really a question of procedure await the decision of the wider and more difficult question as to the general relations of Jenmi and tenant.

The basis principle of the Bill was that a tenant was entitled on eviction to the full market value of the improvements effected by him. Many of its provisions were admittedly drawn from the Bengal Tenancy Act VIII of 1885. The definitions of 'landlord' and 'tenant' in S. 2 were drawn from S. 3 of the Bengal Tenancy Act. The definition was framed so as to include simple tenants as to whose right to compensation a doubt had been expressed. S. 3 which defined "improvement" was taken from S. 76 of the Act. Ss. 4 and 5 which respectively laid down the right of the tenant to be paid for improvements and how the amount should be ascertained and the decree for ejectment should be made conditional on the payment of the improvements were based on S. 82 of the Bengal Tenancy Act. S. 6 which laid down the principle on which compensation was to be estimated was in part derived from S. 83 of the Bengal Tenancy Act. The Commission of 1884 had proposed certain restrictions on the discretion of the courts in the selection of commissioners for valuing improvements and as to limiting the right of appeal, but the commission of 1885 did not consider

it expedient to adopt these proposals. The Bill was passed into law as Act I of 1887.

This Act which as seen above, was intended to secure to tenants ejected from their holdings, the market value of the improvements effected by them, failed to secure its purpose fully. This result was stated to be mainly due to want of precision in the language of the Act, especially in the use and application of the term "improvement" and to the indefiniteness of the rules laid down in S. 6 for the guidance of the courts in determining the compensation payable. For instance, the High Court held in *Valia Thamburan* v. *Parvathi* [1] that there was no provision in the Act for 'capitalising either the annual rent or the annual increment due to the improvement' and that the compensation was to be determined on the basis of capital and labour actually expended in effecting the improvements in the absence of evidence as to the increase in the market value of the land due to the improvements. In another case in which the holding had been improved by the planting of trees, the High Court decided that the compensation payable was not the whole of the future annual produce of the tree but the cost of planting the trees with due regard to the annual produce. [2] These decisions were considered as not carrying out fully the object of the legislature. It was also thought that the provisions of the Act left too much to the discretion of the courts while the absence of clear, uniform and definite principles to guide them in awarding compensation was a serious defect. An Act was accordingly passed in 1900 (Act I of 1900) embodying these suggestions.

The principal changes effected were :

(1) Classification of improvements with a distinct standard of compensation for each.

1. (1889) I. L. R. 13 M. 454.

2. *Shangunni Menon* v. *Veerappan Pillai* (1894) 18 Mad. 407 and *Kunhi Chandu Nambiar* v. *Kunkan Nambiar*, 19 Mad. 384.

(2) The fixing of the rate of interest for capitalising the value of improvements at 6 per cent.

(3) Preparation of tables which are to be presumed to be correct until the contrary is shown.

(4) The tenant is given the right to remove buildings &c. which are not improvements (Sec. 7) when they can be removed without substantial injury to the holding.

(5) Protection is afforded to the landlord against over-planting etc. (Sec. 18)

Some other improvements also were made which will be noticed under the sections.

In spite of these changes, the Act still remains a very difficult one to construe and several Full Benches have already sat upon the proper construction of many of its sections.

On the other questions referred, the commission reported against legislation except to the limited extent of enacting a law requiring due notice to the tenants before eviction. As the customary law itself provided for such notice in the case of tenants from year to year, in the case of other tenants absence of notice was not considered a great heardship and hence the proposals were not carried out.

MADRAS ACT NO. I OF 1900 [1].

An act to secure to Tenants in the Malabar District Compensation for Improvements.

WHEREAS it is expedient to amend the law relating to compensation for improvements made by tenants in the Malabar District : It is hereby enacted as follows :—

Preamble.

1. This Act may be called the Malabar Compensation for Tenants' Improvements Act, 1899; and it shall be applicable to the whole of the Malabar District.

Short title and local extent.

It was stated in the Council at the time of the passing of Act I of 1887 that it would not apply to any but agricultural tenancies and such was also the view taken in S.A 1445 of 1889 where the provisions of the Act were held not to apply to a building lease. As under the Indian Councils Act of 1861, the local legislature could not affect the operation of the Transfer of Property Act which applied to all tenancies other than agricultural, that view would seem to be right and there is no reason why the repeal of that Act which has been re-enacted in substantially the same terms should give the Act an extended operation when there is nothing in any of the sections to indicate such an intention though it must be confessed that there is nothing either to restrict its scope to agricultural tenancies. It appears however that the customary rule as to payment of compensation applied only to agricultural tenancies. (Logan's Manual Vol. II App. III(cXc).

2. [*Repeal of Act I of* 1887.] *Rep. by the Repealing and Amending Act,* 1901 *(XI of* 1901*).*

3. In this Act, unless there is something repugnant in the subject or context,—

Interpretation clause.

1. For Statement of Objects and Reasons, *see Fort St. George Gazette* Supplement, dated 13th December, 1898 ; for Report of the Select Committee, *see ibid.*, dated 1st August, 1899, p. 1 ; for Proceedings in Council, *see ibid.*, dated 14th February 1899, p. 9 ; and *ibid.*, dated 12th December, 1899, p. 16.

(1) "tenant," with its grammatical variations and cognate expressions, includes a person who as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land is in possession thereof, or who, with the *bona fide* intention of attorning and paying the customary rent to the person entitled to cultivate or let waste-land, but without the permission of such person, brings such land under cultivation and is in occupation thereof as cultivator :

"Tenant."

(2) "ejectment" includes redemption or recovery of possession of land mortgaged :

"Ejectment."

(3) "improvement" means any work or product of a work which adds to the value of the holding is suitable to it, and consistent with the purpose for which the holding was let, mortgaged or occupied.

"Improvement."

Tenant's Act I of 1887 S. 2 Cl. (1) defined "tenant" as a "person who holds land under another person and is or but for a special custom or contract would be liable to pay rent for that land to that person". "Rent" was defined by S. 2 Cl. (3) as "whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of tenure or occupation of the land held by the tenant."

These definitions were taken from the Bengal Tenancy Act. They were clumsy and could be hardly said to comprehend all the persons who under the customary law of Malabar were recognised to be entitled to compensation. For instance, it was doubtful if service tenure holders came within the definition. Clearly, squatters could not come within the definition though their right to the value of improvements under the customary law had been recognised, in the following cases : S. A. 361 of 1880 ; S. A. 91 of 1881 ;*Secretary of State* v. *Ashtamurthi* (1889) I.L.R 13 M 89. Both these classes of people would come within the present definition.

A Bench of three Judges had recently to consider the effect of the section in *Kannaran* v. *Chirutha* (1914) I. L. R. 38 M 954. The question there was whether a tenant introduced by a mortgagor after execution of a simple mortgage was entitled to claim compensation for improvements as against the purchaser in execution of the decree upon

the mortgage. Mr. Justice Sundara Aiyar was of opinion that the lessee was not entitled to improvements as against any person but his lessor and his representatives and as the lease had been created subsequently to the mortgage, the purchaser was not bound to pay the value of improvements. Mr. Justice Sadasiva Aiyar held that the lessee was entitled to compensation as the lease was for a short period and within the competence of the mortgagor. On appeal, it was held that the restiction suggested by Mr. Justice Sundara Aiyar did not find a place in the Act. The definition of the term, the Full Bench held showed that it was intended to include persons other than those that would come within the term as defined in the Transfer of Property Act. It included persons who did not enter into possession under an agreement with the person entitled to the possession of the property. According to the Full Bench, the following persons, who were entitled under the customary law to be paid the value of improvements were also intended to come within the definition *viz.*, (*i*) *a person who enters* into possession of waste land without the consent of the owner but with the *bona fide* intention of paying the customary rent to the owner when ascertained. (*ii*) tenants holding under invalid kanoms, leases or mortgages granted by karnavans (S.A. No. 361 of 1880)*ie* tenants put into possession by a person claiming Jenmi title when evicted by the true owner. It cannot be pretended that necessity for *bona fides* is excluded by this decision. According to *Kalliani Amma* v. *Govinda Menon* (1911) 35 M. 648 a tenant who effects improvements after clear notice of the claim by the other mem- under this section. In S. A. No. 654 of 1919, (a case from S. Kanara to which the Act did not apply) it was held that a person holding under an invalid usufructuary mortgage from the karnavan, who was a party to the fraud by the karnavan, was not entitled to compensation under the customary law. A licensee is of course not a tenant within the definition. *In re Olivera* 7 M. L .T. 121 : 5 I. C. 834

An anandravan in management of a portion of the family property or in possession under a maintenance arrangement would not come within the definition. Cf. *Kannan Nair* v. *Tenju Nair* (1882) I. L. R. 5 M. 1, S.A. 582 of 82.

Improvement : The definition of improvement in Act I of 1887 was taken from section 76 of the Bengal Tenancy Act VIII of 1885 and was in these terms : "any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose

for which it was let". The words "product of a work" were added by Act I of 1900 with the object of including trees etc., planted by the tenant and not merely the expenditure and labour bestowed upon the planting as held in *Kunhi Chandu Nambiar v. Kunkan Nambiar* (1896) I. L. R. 19 M. 384.

An Improvement within the meaning of the Act involves three things : (i) There must have been some work (ii) The work must add to the value of the holding (iii) It must be suitable to the holding and consistent with the purpose for which the holding is let, mortgaged or occupied.

As illustration of point No. 1 we may give this : The tenant is entitled to the value of spontaneous growth under S. 10, but if it involved no labour or expense on his part, it would not be an improvement within the meaning of S. 3 and he would not be entitled to any compensation under S. 5. *ValiaThamburathi v Parvathi* (1888) I.L. R. 13 M. 454. If it did involve ever so small an amount of labour or expense on the part of the tenant, it will constitute an improvement and the tenant would be entitled to ¾ of the value of the trees. Under the customary law, it does not appear that the tenant was entitled to any compensation at all in respect of spontaneous growths. *Narayana v. Narayana* (1884) I. L. R. 8 M. 284.

As regards the second point, S. 4 raises a presumption in favour of all works or products of work enumerated therein that they add to the value of the holding but it is open to the landlord to show that they do not as a matter of fact add to the value of the holding. In the case of works not specifically mentioned, the burden would be on the tenant to show that the alleged improvement satisfies the conditions laid down by this section. The value spoken of here may be the letting value or the market value or both. *Valia Thamburathi v. Parvathi.* (1888) I. L. R. 13 M. 454.

Temporary sheds are not improvements as they do not add value to the holding S. A. No. 2429 of 1917. Nor the making of ridges without converting the land into wet A. S. No. 121 of 1917.

As regards the third point : Suitable to the holding and consistent with the purpose. The two ideas are distinct though they may at times overlap. It is not quite clear what exactly is intended to be denoted by the word "purpose". The Transfer of Property Act speaks of agricultural and manufacturing purposes and distinguishes

them from leases for other purposes where a shorter period of notice is required. Understanding the term in the sense it is used in the Transfer of Property Act, to convert agricultural land into building site would be doing a thing inconsistent with the purpose of the holding. To build a shop (25 I.C. 623) or a church (12 M. 320) or a guano factory (S.A.331 of 1917) on an agricultural holding would be obviously inconsistent with the purpose of the holding and would also be unsuitable to the holding.

In *Kunhammed v. Narayana Mussad* (1889) I. L. R. 12 M. 320 it was held that conversion of a wet land into a cocoanut or areca nut plantation was both unsuited to the holding and inconsistent with the purpose for which the land is demised. The same view was taken in S. A. No. 515 of 1887 and S. A. No. 296 of 1884. On the other-hand in *Venkataya v. Ramaswamy* (1898) I. L. R. 22 M. 39 : 8 M. L. J. 278, it was held that an occupancy tenant in raising a cocoanut tope on a land which had been previously cultivated with paddy etc., had not altered the character of the holding and thereby committed waste. Mr. Justice Subramanya Iyer distinguishes *Kunhammed* v. *Narayanan* (1889) 12 M. 320 on the ground that what is applicable to the occupancy tenant would not be applicable to a kanom tenant who holds land for 12 years and who was in addition under the particular document liable to forfeiture, of his tenure in case of non-payment of rent. If his Lordship had to state the exact ground on which he would support 12 M. 320, he would probably have held that the improvement was unsuited to the nature of the holding having regard to its duration &c. *Venkatayya* v. *Ramaswamy* 22 M. 39 contains some helpful observations as to what would amount to the use of a holding for a purpose inconsistant with the nature of the holding. The mere fact that a land has been used for pasture would not make it one let for the purpose of pasture or in the case of Malabar lands, the fact that a land is a jungle land would not disentitle the tenant from reclaiming it and growing paddy on it. In *Murugesa Chetty* v. *Chinnatambi Govindan* I. L. R. 24 M. 421 opinion is expressed that the lease of a land for cultivation of betel was a lease for agricultural purposes. Growing garden crops on paddy land may not be a waste in that view provided of course the crops are suitable to the nature of the land.

The assumption of the Act, judging from S. 4 seems to be that planting of fruit trees is *prima facie* an improvement even though it involved the conversion of a paddy field into a cocoanut plantation and it would lie on the landlord to shew that it was unsuitable to the holding or inconsistent with the purpose for which it was let or did not add value to the land.

Product of Work : These words were added to make it clear that the tenant was entitled to claim compensation in the case of fruit trees for instance and not only "for the work of planting and protecting and maintaining" as held in *Kunhichandu Nambiar* v. *Kunkan Nambiar*, (I.L.R. 19 M. 384,) but to the value of the trees themselves as held apparently in *Achyutam Nair* v *Narasima Patar* I. L. R. 21 M. 411. The alteration would seem to be in accordance with the customary law under which "the buildings and plantations are the property of the tenant" (Fifth Report Vol. II p. 82) *Krishna Pattar* v. *Srinivasa Patar* I.L.R. 20 M. 124 at 127.

What are presumed to be improvements.

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act :—

(*a*) the erection of dwelling-houses, buildings appurtenant thereto, and farm buildings ;

(*b*) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes ;

(*c*) the preparation of land for irrigation ;

(*d*) the conversion of one-crop into two-crop land ;

(*e*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or of waste-land which is culturable ;

(*f*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(*g*) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ;

(*h*) the planting or protection and maintenance of fruit-trees, timber-trees and other useful trees and plants.

This Section cooresponds to Sec. 3, Cl. (2) of Act I of 1887. The differences are : (i) The words "works or the products of such works" have been added. (ii) Cl. (i) in the old section contain the words "the protection or maintenance of such trees, "the same having grown spontaneously during the tenancy" has been omitted.

Tenant entitled to compensation on ejectment.

5. (1) Every tenant shall on ejectment be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation, at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money (if any), be entitled to remain in possession until ejectment in execution of a decree or order of Court.

(2). A tenant so continuing in possession shall during such continuance hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

This Section corresponds to Section 4 of Act I of 1887, which runs thus : "Every tenant who is ejected from his holding shall, notwithstanding any custom to the contrary be entitled to be compensated for improvements made by him or his predecessors in interest and for which compensation has not already been paid."

Right under contract when more favourable : There is nothing in this section to prevent the tenant from claiming compensation under any contract if it should prove more favourable. S. 19 strikes only at contracts which take away or limit the right of the tenant and therefore cannot be said to go against the right of the tenant to elect to take under the contract. Neither can S. 20 be said to be against it as it applies only to improvements not dealt with by the Act. *Kozhikot Pudiya Kovilagath Sree Mana Vikraman* v. *Chundayil Modathil Anantha Pattar* I. L. R. 34 M. 61, *Neechooli Pary Amma* v. *Chathanadiath Kalasseri Kunhikandan* I. L. R. 36 M. 410, *Kochu Rabia* v. *Abdurahaman* I. L. R. 38 M. 589, and *Pallalaththil Kunhan Nambiar* v. *Kolangarathu Raman Nayar* (1920) 39 M. L. J. 63 : 11 L. W 559. hold that he has such right.

Right not limited to the Lessor s The claim under the Section is not restricted to the lessor. The tenants' right is absolute provided he fulfils the conditions laid down by the Section and by the definition of the word "tenant." *Kannan v. Chirutha* I. L. R. 38 M. 954.

Compensation for Improvements in the land from which eviction takes place : The Section does not say that the plaintiff is bound to pay compensation due in respect of the whole of the defendant's holding. It was accordingly held in *Puthiyapurayil Kannyan Baduvan* v. *Chennyanteak Puthiyapurayil Allikutti* I. L. R. 42 M. 603 that the purchaser of a portion of the land included in the holding was entitled to recover from the lessee on paying compensation for the improvements in that particular portion. What the Full Bench decides is not that the tenant can be evicted from a part of the holding paying compensation in respect of that part but that wherever the tenants could be evicted from a part of the holding under the general law, there is nothing in this Section to take away that right. Where the *tenancy* in question is a mortgage, obviously, the purchaser cannot recover a part of the holding comprised in the mortgage. Nor even in the case of lease, could the lessor himself recover only a part unless he chooses to abandon his right to the portion not claimed.

It must be shewn that the improvement was effected by the tenant. *Kunjunni* v. *Moopil Nayar* (1918) M. W. N. 666 ; S. A. 999 of 1917. Rise in annual value for instance, cannot by itself, be sufficient to displace annual value for instance, cannot by itself, be sufficient to displace necessity for proof that the improvement has been effected by one of the named persons. *Kunjunni v. Ramunni* 35 M. L. J. 219, but see *Thiruvatiyil Vattath Kunchu Menon* v. *Vishnu Barathikal* alias *Pakrayur Swamiyar* 28 I. C. 389.

"*Predecessor in interest or any person not in occupation at the time of the ejectment who derived tittle from either of them.*"

.. The words cannot be said to adequately describe the class of persons for whose improvements the tenant in possession is entitled to claim compensation. Unless the word 'predecessor-in-interest' is understood in a somewhat loose way, the Section may not include many cases which must obviously have been intended to come within it. The trouble arises largely from the fact that in drafting this Section, sufficient attention was not paid to the fact that the definition of the word "tenant" in the Act is so framed as to include very varying kinds of interests such as mortgagee's, and lessee's interests and even in cases where the occupant has no lawful title to possession. A lessee or kanomdar gets possession after paying compensation to a squatter who under the Full Bench ruling, would be entitled to compensation. In what sense, could the squatter be considered a predecessor in interest of the lessee or kanomdar ? In the ordinary legal

parlance, it is difficult to see how a previous lessee, whose claim to compensation has been met by the subsequent lessee can be said to be a predecessor-in-interest. Obviously, the word "predecessor-in-interest" could not have been intended to include the lessor or mortgagor plaintiff. In the case of a mortgagee paying off a previous mortgagee the latter may be regarded as the predecessor-in-interest as under the law the subsequent mortgagee is subrogated to his rights. To cover obvious cases, it may be necessary to understand the word "predecessor in interest" as the derivation of the word suggests, as meaning "one that went before him in interest, some "tenant" as understood by the Act who preceded him in occupation either immediately or mediately through others without the continuity being broken up by the intervention of the plaintiff. See *Thekkamangalath Raman* v. *Kakkasseri Pazhiyot Manakkal Karnavan* (1915) 28 M. L. J. 184, *Thupran* v. *Kasim* 17 I. C. 433 (1912). This view accords with natural justice. If the landlord has got possession, even though without paying compensation, there is no reason why the subsequent tenant should be entitled to claim it. On the other hand, if the tenant is able to square up with the previous occupant and gets favourable terms from him there is no reason why the landlord should get the benefit of it. If somebody who is not a tenant within the meaning of the Act was in occupation before the defendant and worked the improvements, it may be that the defendant would not be entitled to it. *Kunjunni* v. *Ramunni* 35 M. L. J. 219. It is not quite clear however that if a trespasser (not being a tenant) effects improvements during the currency of the defendant's lease or during the currency of his predecessor-in-interest's lease the benefit of it would not go to him.

Derive Title : A person who does not in strict law *derive title*, nevertheless may for the puprpose of the Act be a tenant. Such a tenant must for the purposes of the Act be regarded as a person "deriving title" from the person having lawful title.

The same tenant under prior lease : The tenant himself under a prior lease should come within the Section *Narayani Amma* v. *Kunchukutti Amma* (1916) 32 M. L. J. 541. Of course this could be only on the footing that in S. 5 the Act does not have regard to this contract of tenancy or that, but the tenancy. Cf. *Thekkamangalath Raman* v. *Kakkasseri Pazhiyot Manakkal Karnavan* (1915) 28 M. L. J. 184.

And for which compensation has not been paid—that is to say, either by the ultimate owner or the plaintiff. The fact of renewal

does not raise a presumption that there has been a payment. *Mupanagari Narayanan Nair* v. *Virupatchan Nambudripad* I. L. R. 4 M. 287. Even an increase in the purapad does not. *Narayana* v. *Narayana* I. L. R. 8 M. 284.

Compensation is to be assessed on the footing of conditions at the date of the assessment : Subject to the qualification *viz.* that the amount is liable to be varied if there is subsequently a change in the condition of the improvement, this is the general rule. In *Veluthamma* v. *Pathuma* 17 I. C. 131 it was held that the publication of new tables when the case was pending in the appellate court did not entitle the tenant to have a re-valuation on the basis of those tables. It would have been otherwise, their Lordships point out, if for any reason the court had to take evidence as to valuation. In *Kunhammad* v. *Kutti* 30 M. L. J. 203, the new tables came into force after the decree and it was similarly held that the tenant could not have a re-valuation as there was no change in the condition of the improvement. In *Kunjunni v. Ramunni* 35 M. L. J. 219 the court went so far as to hold that when the report of one commissioner is set aside and another is appointed to value the improvement, the value of the improvements at the date of the first commissioner's report should govern. This is perhaps going too far.

The law that is to govern also is the law prevailing at the time of the assessment. Cf. *Kozhikot Pudiapurayil Sreemane Vikraman* v. *Chundayil Modathil Ananta Pattar*, I. L. R. 34 M. 61. For instance in *Thekkamangalath Raman* v. *Kakkasseri Pazhiyot Manakkal Karnavan* (1915) 28 M. L. J. 184 the tenant was held entitled to the value of spontaneous growths under the new Act though he had not to pay for them to the previous tenant, having regard to the state of the law then prevailing.

If the condition of the improvement since redeeming the previous tenant for any reason deteriorates the loss falls on the tenant and not on the Jenmi. If the scale of payment is altered by reason of the publication of fresh tables, the benefit of such altered rates also goes to the tenant. It will be different if there is a contract between the tenant and the Jenmi that the amount that the former has to pay the previous tenant is to be added to the kanom amount. That is tantamount to payment by the Jenmi himself. *Kunjunni* v. *Ramunni.* 35 M. L. J. 219. Thereafter, except in so far as the subsequent

labour or expenditure of the tenant entitles him to additional compensation, the value is once for all settled and the tenant neither gains by any increase in value nor suffers by any deterioration in quality provided that no waste or misconduct on his own part is involved.

A lessee is not bound by the valuation arrived at in his suit against a previous lessee when he is sued. Appeal 323 of 1917.

Notwithstanding determination of tenancy, till eviction he holds as tenant : This and the next clause taken together would seem to recognise the title of the tenant (i) to remain in possession (ii) as a tenant (iii) subject to the terms of the lease or mortgage as the case might be until actually evicted. The Jenmi would not be entitled to mesne profits even though the full amount due to the tenant has been paid or tendered to him. Sec. 83 of the Transfer of Property Act has no application to cases governed by the Malabar Tenants' Compensation Act. *Parameswara* v. *Kittunni* 33 M. L. J. 591. *Meyarth* v. *Kunji* 37 M.L.J. 206. A different view was taken in *Chani* v. *Amu Pattar* (1916) 1 M.W.N. 160: 3 L.W. 246. But the former view seems to be more in accordance with the true import of the section. The tenant would be entitled to effect improvements and the landlord would be entitled to rent and would also be entitled to set it off against the tenant's claim for compensation as if the determination of tenancy had not taken place. *Abdulla Koya* v. *Kallampurath Kanaran* 33 M. L. J. 463, *Keyi* v. *Madhavi Amma* 29 I. C. 559. But to hold that there is no determination of the lease till actual payment of compensation or eviction so as to prevent the bar of *res judicata* to a fresh suit for possession or to prevent limitation running as against the landlord as the last case would seem to hold does not seem to be correct. On the first point, that case is dissented from in *Mayankutti* v. *Kunhammad* 41 M. 341 where it is held that the claim for subsequent improvements is a matter for execution and not for a separate suit and a second suit in ejectment for redemption would not lie. On the second point the case is supported by the observations in *Thema* v. *Kunhi Pathumma* 41 M. 118. But both the cases seem to ignore the fact that the article of limitation applicable to such a case is Art. 139 under which limitation starts from the determination of the tenancy and not from the date when the

possession becomes adverse. The plain implication of the words "notwithstanding the determination of the tenancy" is that for all purposes other than those specified in the Act, there may be a determination of the tenancy. The observation in 41 M. 118 that under S. 5 the position of a person holding over is not that of tenant seems to be opposed to the plain words of Cl. (2) but it is nevertheless submitted that the clause has not the effect of preventing limitation from running in all cases of Malabar tenancy, i. e. including mortgages, leases, with lawful title and without. The fact that squatters come within the definition of "tenant" will show that that could not have been the intention of the legislature. In fact, before the passing of the Act, in the case of squatters, the rule was that the Jenmi was barred if he did not sue within 12 years *Secretary of State* v. *Asthamurthi* (1889) I.L. R. 13 M. 89, 118 *Muniyappa Chetty* v. *Muppil Nayar* 8 M.L.J. 117:21 M. 169 There is an observation in *Chowkkaren Keloth* v.*Karuvalote Parkum* (1915) 29 I. C. 559 at 560 that the tenant retains his status as such till he is paid for all the improvements. In *Mayankutti* v. *Kunhammand* 41 M.641 at 644 Sadasiva Aiyer J. doubted the correctness of this observation and rightly. For if that was the state of the law it would be possible for a tenant to postpone eviction perpetually by continually making fresh improvements while the inquiry for the last revaluation is going on. *Sankaran Nambudri v. Sankara Nair.* (1921) i. L. R. 44 M. 960.

So far as the section goes, the statutory tenancy ceases on the possession ceasing and the court is bound to put the plaintiff in possession on paying the amount fixed by the decree. It is accordingly held in *Subramania Pattar* v. *Kuthiravattath Nair* 41 M. L. J. 15 that the plaintiff was not entitled to mesne profits because in appeal he was directed to pay a slightly higher amount. This reasoning is not conclusive. The tenant's right in those circumstances is not based on S. 5 but on the right of restitution possessed by him in the event of the entire amount payable to him not being paid. It cannot be doubted that the tenant would be entitled to restitution of possession if the plaintiff did not choose to pay the full amount of compensation. See C. M. S. A. 123 of 1914. The judgment may be supported on the alternative ground suggested *viz.* that the tenant did not appeal against the order in ejectment. In somewhat similar circumstances it was held in *Kunhi* v.*Kunhi Amma* 57 I.C. 674: 13 L.W. 32 that the tenant must be

taken to have impliedly surrendered the tenancy and confined his claim to the value of improvements.

Decree in ejectment to be conditional on payment of amount of compensation ascertained under this Act of the difference between it and the amount, if any, adjudged to the plaintiff from the defendant.

6. *(1)* In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant established claim for compensation due under section 5 for improvements the Court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that, on payment by the plaintiff into Court of the amount so found due and also the mortgage money (if any), the defendant shall put the plaintiff into possession of the land with the improvements thereon.

(2) If in such suit the Court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the Court shall set-off such sum against the sum found due under sub-section *(1)*, and shall pass a decree declaring as the amount payable to him on ejectment the amount (if any) remaining due to the defendant after such set-off,

Compensation for subsequent improvements and revaluation, if necessary, of improvements at the time of ejectment.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree, and the revaluation of an improvement for which compensation has been so adjudged, when and in so far as such re-valuation may be necessary, with reference to the condition of such improvement at the time of ejectment as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy, shall be determined by order of the Court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause *(c)* of section 244 of the Code of Civil Procedure. XIV of 1882.

This section corresponds to sec. 5 cl. (1) of Act I of 1887 which ran thus: "Whenever a court makes a decree or order for the ejectment of a tenant, it shall determine the amount of compensation (if any) due to the tenant for improvements and shall make the decree or order of ejectment conditional on payment of that amount to the tenant."

Shall pass a decree . The Full Bench in *Nellayi Variath Sulapani* v. *Vadanapat Ashtamurthi Nambudri* 3 M. 382 decided that the value of the improvements should be ascertained and provided for in the decree and not left to be determined in execution and the practice is continued by the legislature *Nani Nair* v. *Ashtamurthi Nambudri* 8 L.W. 275; *Abdulla Koya* v. *Kanaran* 33 M. L. J. 463. The new C.P.C Order 34 Rr. 7 and 8 do not affect decrees in redemption actions in Malabar.

Ordering that on payment etc. : It is suggested in *Thema* v. *Kunhi Pathumma* I. L. R. 41 M. 118 that even in the case of leases, a time should be fixed for the payment of the improvements as in a redemption action. This, it is submitted, is not right. There is no analogy between the two kinds of actions. In the case of a mortgage, the mortgagor's interest is in the eye of the law, at any rate the English law, mere equity. In no sense, is the landlord's interest a mere equity of that sort.

Set off : The right of the Jenmi to set off against the tenant's claim for improvements the amounts due to him from the latter is recognised by Malabar custom and it cannot be prejudiced by any alienation by the tenant. *Achuta* v. *Kali* 7 M. 545, *Unnian* v. *Rama* (1885) 8 M. 405, *Eressa Menon* v. *Shamu Pattar* (1897) 21 M. 138, *Vasudava* v. *Damodaran* 23 M. 86 (Case of verumpattam tenant) , *Vedapurathi* v. *Avara* (1901) 25 M. 568 *Harihara Mangalath* v. *Ibrayan Kutti* (1917) M. W. N. 275 ; *Peedi Kalyani Kunhi* v. *Thayyil Kunhi Amma* 13 L.W. 32.

Where the value of the improvements due to the sub-tenant is similarly liable is doubtful .*Vedapurathi* v. *Avare* 25 M. 568 is for recognising the liability but has made no attempt to state the legal basis of the liability. Under the section at any rate, unless the particular sum of money is claimable from the *defendant* it cannot be set off against the claim of the latter for improvements. Having

regard to the definition of the word tenant which includes a sub-tenant, the sub-tenant has an independent right to the value of improvements, effected by him, and the landlord cannot claim to set off against his claim the arrears of rent due from his lessee. The sub-tenant is not liable under the general law for rent and there is no reason to suppose that the Malabar law is different in this respect. Where the defendant is only a lessee under a mortgagee, there could be no question of set-off at all.

The claim is not confined to rent. The landlord's claim to damages for trees improperly cut or for waste may also be similarly set off *Abdul Koya* v. *Kanaran* 33 M. L. J. 463; *Pumpalia Vengalia* v. *Kunhamina* 25 I. C. 704. The landlord has the right irrespective of any question of limitation. *Unnian* v. *Rama* 8 M. 415; *Harihara Mangalath* v. *Ibrayam Kutti* (1917) M. W. N. 275; *Peedy Kalliani* v. *Kunhi* 13 L. W. 32. A suit for arrears of rent against improvements 9 M. L. J. 158.

Revaluations: The right to revaluation on the ground that there has been a change in the condition of the improvements was recognised even before the Act in *Ramunni* v. *Shanku* 10 M. 367 and the loss fell on the tenant *Krishna Pattar* v. *Srinivasa Pattar* 20 M. 124.

Revaluation is permitted on this ground and none other. Publication of new tables under sec. 15 is not a ground. *Kunhamed* v. *Kutti* 30 M.L.J. 203 *Veluthamma* v. *Pathumma* (1912) 17 I.C. 131. An application for revaluation does not operate as stay of execution of the decree *Sankaran Nambudripad* v. *Sankaran Nambudripad* (1921) I.L.R 44 M. 960

Tenant may remove buildings, works or trees not deemed improvements, within a time to be fixed.

7. Whenever a Court passes a decree or order for ejectment against a tenant and such tenant has erected any building, constructed any work or planted any tree which the Court finds is not an improvement for which compensation can be claimed, but which the Court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the Court in its decree o order.

There was nothing corresponding to this in Act I of 1887.

May remove buildings &c.: Time was given in *Kunhammed* v. *Narayanan Mussad* (1889) 12 M. 320 to the tenant to remove the improvements effected by him which were considered

to be unsuitable to the holding . Even in cases not governed by the Act, this is considered the right course to take, see *Angammal* v. *Aslami Saheb* I. L. R. 38 M. 710.

The right of the tenant to remove trees planted or buildings put up by him whether they are improvements or not during the currency of the lease is not affected by the provision for compulsory award of compensation in the Act. *Vasudavan Nambudiri* v. *Chathi Achan* I.L.R. 24. M.47. After the expiry of the period of the lease, the common law would seem to leave it to the landlord as he likes to pay compensation to the tenant or to allow him to remove the improvements effected by him. See *Ismai Kani Rowthen* v. *Nazarali Saheb* 27 Mad. 211

Powers to make rules for appointment of assessors, etc.

8. The Local Government may, from time to time, by notification in the Fort St. George and Malabar District Gazettes, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the Local Government thinks fit, determining the qualifications of those assessors, the mode of selecting them, the fee payable to them, and the procedure to be followed in case of a difference of opinion between the judge and one or more of such assessors.

The following rules have been made by the Local Government under Sec. 5 (2) of Act I of 1887 applicable under this Act having regard to Sec. 18 of the Madras General Clauses Act G. O. 183 (Judicial), 16th April 1888, published in the Fort St. George Gazette 1888 Part I page 298.

The following rules have been framed by the Local Government under section 5 (2) of Act I of 1887.

Rule I. In suits tried under this Act, the following persons between the ages of 21 and 60 shall be liable to serve as assessors for the purpose of estimating the compensation to be awarded provided they reside within the limits of the jurisdiction of the Court in which the suit is tried, and not more than 20 miles by land or water, or 50 miles by rail plus 10 miles by land or water, from the court-house :—

(*a*) Retired public servants in receipt of a pension of not less than Rs. 20 per mensem.

(*b*) All other persons paying annually to Government not less than Rs. 50 as land revenue or Rs. 20 as income-tax, or believed to have an annual income of Rs. 1,000 or upwards. Provided that vakils, village officials and persons in the service of Government or of a Railway Company, shall be ineligible to serve as assessors.

Rule 2. As soon as practicable after the publication of these rules, each District Munsif, in communication with the Tahsildar, shall draw up a list of persons eligible to serve in his Court as assessors. The list shall contain the names, places of abode and business, if any, of such persons, and shall be annually revised in, or as near as may be to, the second week of January.

Rule 3. Copies of such list, or revised list, as the case may be, shall forthwith be annexed in some conspicuous place in the Courts of the District Judge and District Munsif, and in the office of the Tahsildar, with a notice attached to each stating that objections to the list shall be heard and determined by the District Munsif at a time to be mentioned in the notice. The decision of the District Munsif as to the retention or removal of the name of any person from the list shall be final.

Rule 4. When the District Munsif's lists have been finally settled, each District Judge shall cause a similar list to be compiled therefrom for his own Court and that of every Subordinate Judge sitting at the same station, and every outlying Subordinate Judge shall compile one for his own Court.

Rule 5. Assessors shall only be appointed in cases in which the amount of compensation tendered or claimed exceeds Rs. 250, and upon the application made by some party to the suit at or before the first hearing, or by special leave of the Court at some later stage of the suit.

Rule 6. In such cases the Court shall select by lot from the list two assessors for the purpose of aiding the Court in determining the amount of compensation, and notice of such selection shall be served by the Court on the parties to the suit, or their agents or their vakils three clear days before the day of hearing.

Rule 7. Either party may object to the assessors so chosen or to either of them. The decision of the Judge upon the objections shall be recorded by him and shall be final.

Rule 8. Every summons to an assessor shall be in writing and shall require his attendance at a time and place to be therein specified.

Rule 9. On the day fixed for the attendance of the assessors, the Judge and the assessors shall proceed to hear the parties or their pleaders and the evidence tendered and to determine the amount of compensation.

Rule 10. The opinion of each assessor shall be given orally and shall be recorded in writing by the Judge.

Rule 11. In case of a difference of opinion between the Judge and the assessors or either of them, the decision of the majority shall prevail.

Rule 12. Every assessor appointed under these rules shall receive a fee of Rs. 5 for each day that he may be away from his house in the discharge of his duty as assessor.

Rule 13. Whenever the Judge thinks that the assessors should view the improvements for which compensation is claimed, he shall make an order to that effect, and such order may provide that the assessors shall be conducted to the site of the improvements by an officer of the Court.

Rule 14. If, before the amount of compensation is determined, any assessor dies or becomes incapable to act, the Judge shall proceed to select another assessor from the list by lot. The inquiry shall be then re-commenced, unless the parties agree that that course is unnecessary, in which case the agreement shall be recorded by the Judge, the evidence already recorded shall be read to the new assessor or assessors, and the trial shall proceed as if such assessor or assessors had been originally appointed.

In practice this section is never resorted to; instead the less cumbrous method of appointing commissioners is adopted. In *Kudiravattath Thottamma* v. *Subrahmanyam* 14 L. W. 620 the practice of issuing commissions after commissions where objection is taken and considering all the reports as supplying data for valuation is disapproved. The proper course is stated to be to consider the objections to the report and with the aid of such evidence as may be adduced come to a conclusion as to what extent the valuation of the commissioner should be varied and only if the court is satisfied that the commissioner has misconceived his functions on the point in question that it should issue another commission and after issue of fresh commission the first commissioner's report should no longer be referred to. Where the court merely directs the issue of a fresh commission without formally superseding the former commission, the order does not amount to an order to re-value and the valuation should be made on the footing the affairs stood at the first commissioner's investigation. 35 M. L. J. 219. *Kunjunni* v. *Ramunni*. It is there stated that ordinarily the commissioner's report should be supplemented by the evidence which he gives in the case and that otherwise his report is not of much value.

Improvement producing an increase in the value of the annual net produce.

9. (1) When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the Courts shall determine, as nearly as may be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value, at 6 per cent., of an annuity equal to such money value for such number of years, and also the costs of making the improvement determined in the manner prescribed in section 11;

(2) If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded.

(3). If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

Explanation.—The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and cesses.

See *Abdulla Rowthan* v. *Vasudeva Raja* 29 I. C. 286. Sections 9 to 17 take the place of Sec. 6 of the old Act and provide definite rules for the guidance of the Courts instead of the vague generalisations contained therein.

Sec. 6 of the old Act was as follows :—The compensation to be awarded for an improvement shall be the amount by which the value of the produce of the holding or the value of the produce is increased by the improvement.

Explanation : In ascertaining such amount the following matters shall be taken into consideration :—(a) the condition of the improvement and the probable duration of its effects (b) the labour and capital required for the making of the improvement (c) any reduction or re-

1. For notification under this section, *see* Madras List of Local Rules and Orders, Ed. 1908 ; Vol. II, Part I, p 751.

mission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement.

A perusal of *Valia Thamburatti* v. *Parvati* (1889) 13 M. 454, *Shangunni Menon* v. *Veerappan* (1899) 18 M.407, *Kunhi Chandu* v. *Kunhan Nambiar* (1896) 19 M. 384 will give a fair idea of the difficulties that arose under the previous Act and the way in which attempt was made to solve those difficulties.

In *Samu Menon* v. *Vasudeva Raja* 7 L. W. 287, a contract prior to 1886 had fixed the rate payable for converting forest-lands into Nilams. There were certain tanks and channels not covered by the contract for which the tenant was entitled to compensation. The tenant claimed that he was entitled to get increased compensation under S. 9 and not merely cost of labour &c. under S. 11. Their Lordships held not. Two reasons are given for this conclusion, first because Sec. 9 deals only with cases where at the time of demise, the land was of some value and as additional value was imparted to it by the labour of the tenant. Secondly, the section was intended to apply only to cases where the Court has to fix the entire valuation under the Act.

Rise in rent ought not to be made the sole basis for the calculation of value *Damodaran Nambudri* v. *Gopalan Nair* 9 M. L. T. 10 :8 I.C. 509. It is only when the value is not determinable otherwise, that resort may be had to annual value. See *Thiruvatayil Vattath Kuncha Menon* v. *Vishnu Bharatigal* 28 I. C. 389, *Ponniath Akathoot* v. *Krishna Kayil* 28 I. C. 850.

Reclamation on the faith of the landlord's contract to supply water is an improvement but in calculating the annual value, the charge for water ought to be deducted. *Kunjunni* v. *Ramunni* 35 M. L. J. 219.

Improvement consisting of trees or plants spontaneously grown during tenancy or sown or planted by tenants.

10. When the improvement is not an improvement to which section 9 applies, but consists of timber-trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction to be cut and carried away.

Immature paddy crops may be treated as an improvement within the meaning of the Section and value fixed accordingly. *Narayanan*

Nambudripad v. *Krishna Pattar* 26 M.L.J. 348 (Per Sadasiva Aiyar J., Spencer J. doubting). The tenant's right to compensation for spontaneous growth under the customary law was denied in *Narayana* v. *Narayana* 8 M. 284. Even under the present Act, if the spontaneous growths involved no labour for maintenance or protection the tenant would not ben entitled to compensation, for the definition of improvement involves as an essential work on the part of the tenant. Under the Act of 1887 the tenant was entitled only to the cost of protection and maintenance *Valia Thamburatti* v. *Parvathi* 13 M. 454, which is no the case now.

The words "period of tenancy" "before the commencement of the tenancy" if construed strictly might lead to obvious injustice. In a strict view a tenant paying up a previous tenant for spontaneous growths would not be entitled to recover any compensation. There would equally be difficulty in the case of renewal. The difficulties would be got over by treating all periods antecedent to the period of the last tenant as included in the period of the tenancy, provided no compensation had been paid. *Thekkamangalath Raman* v. *Kakkasseri Karnavan* 28 M. L. J. 184, *Narayani Amma* v. *Kunchukutty Amma* 32 M.L.J. 541.

Though the scale of payment for spontaneous growth has changed considerably under the new Act it cannot be said to have altered the theory as to ownership of spontaneous growth *Narayani Amma* v. *Kunchukutty Amma* 32 M. L. J. 541.

Other kinds of improvements.

11. When the improvement is not an improvement to which section 9 or 10 applies, the compensation to be awarded shall be the cost of the labour, including supervision thereof, and of the materials, together with other expenditure, if any, which would at the time of the valuation be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

Where the landlord's timber is used, the tenant is entitled to get the value of it as compensation. *Samu Menon* v. *Raja Vasudeva Raja* (1917) 7 L. W. 287

12. Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Value of improvement to be ascertained in the way most favourable to the tenant.

Illustrations.

(*a*) The compensation to be awarded for a jack tree as a fruit-tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(*b*) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs, 100,

In each case, the Court shall award the higher amount,

13. When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

Improvement consisting in the protection and maintenance of trees and plants not sown or planted by tenants and of trees and plants spontaneously grown prior to tenancy.

See *Narayani Amma* v. *Kunchukutty Amma* 32 M. L. J. 541.

Narayani Amma v. *Kunchukutty Amma* 32 M. L. J. 541,

14. The Local Government may prepare for the whole or any part of the Malabar District tables showing the maximum and the minimum rates of compensation to be awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under sections 9 10, 11 and 12 shall not, except where the Court is satisfied that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

Power to frame tables of maximum and minimum rates of compensation.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the Local Government may prepare tables for the whole or any part of the Malabar District showing all or any of the following matters:—

Power to prepare tables of prices of products, the cost of cultivating paddy planting, protecting and maintaining trees and plants,

(*a*) the price of cocoanuts, arecanuts, pepper and paddy;

(*b*) the cost of—

(i) cultivating and harvesting a crop of paddy;

(ii) planting, protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree, and a pepper vine until the tree or vine is in bearing;

(iii) protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall on publication be receivable in evidence, and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved: Provided that, in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

Such tables to be presumptive evidence that the prices and costs therein mentioned are correct.

The Tables published under this Section are merely presumptive evidence of the compensation payable and do not create any fresh right in parties. It was accordingly held in *Kunhammad Kutti* v. *Panchara Aleema* 30 M. L. J. 203 (17 M. L. T. 131) that the appellate court acted improperly in directing revaluation on the ground that since the decision in the first court, fresh tables have been published under this section.

1. For tables prepared under this section, *see* Madras List of Local Rule and Orders, Ed. 1908, Vol. II, Part I, p. 751.

16. In respect of any product for which no table showing the price has been published, and whenever the presumption under section 15 as to price is sought to be rebutted, the Court shall adopt as the money value, for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluq where the land is situated, for a period of ten years immediately preceding the institution of the suit.

Value to be ascertained where no table has been prepared or the correctness of the price mentioned in the table is disputed.

17. The tables prepared under this Act shall be published in English and Malayalam in the Fort St. George and Malabar District Gazettes, and shall be kept publicly posted in the Courts having jurisdiction over the area to which the tables apply.

Tables to be published.

The Local Government may by like publication cancel or vary from time to time the tables so published.

18. When trees are planted in excess of the following scale, the Court, if satisfied that, in the circumstances of the particular case, the land is over-planted, may, notwithstanding anything hereinbefore contained, either refuse to grant any compensation, or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature:—

Compensation may be refused where trees have been over planted.

Cocoanut trees	...	...	120 per acre.
Arecanut trees	...	...	720 „
Jack trees	...	...	60 „

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

19. Nothing in any contract made after the first day of January, 1886, shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act :

Contracts affecting tenant's right to make improvements and claim compensation under the Act invalid.

Provided that nothing herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

Proviso.

This section corresponds to section 7 of Act 1 of 1887 which was in these terms : " Nothing in any contract between a landlord and a tenant made after the first day of January 1886 shall take away or limit the right of a tenant to make improvements and claim compensation for them in accordance with the provisions of the Act." The proviso is new.

Nothing in any contract made after 1st January, 1886 : Contracts made before are not affected whether the improvements are effected before the Act or after the Act. *Randupurayil Kunhisore* v. *Neroth Kunhi Kannan* I. L. R. 32 M. 1 (F. B.). An agreement to accept compensation for improvements according to Desa Maryada or usage is not a contract within the meaning of the section *Kerala Varma Valia Rajah* v. *Oadan Ramunni* 33 M. 218 (F. B.). ; *Kunhan* v. *Raman* 39 M. L. J. 63 ; *Kozhikkot Sreemanavikraman* v. *Modathil Ananta Pattar* 34 M. 61. The Act has retrospective operation except in so far as this section saves contracts entered into before.

Affect or take away : The tenant may elect to take under the contract if it is more favourable to him *Kozhikkot Sreemanavikraman* v. *Modathil Ananta Pattar* 34 M. 61 ; *Kochu Rabia* v. *Abdur Rahiman* I. L. R. 38 M. 589 ; *Kunhan* v. *Raman* 11 L. W. 559 : 39 M. L. J. 63.

Right of the tenants to make improvements and claim compensation : For a time it was in controversey whether the section applied only to contracts limiting the right of the tenant " to effect improvements and to claim compensation therefor " or all contracts whether they restricted the right of the tenant to do the one or the other or both. *Kozhikkot Sreemana Vikraman* v. *Modathil Ananta Pattar* I. L. R. 34 M. 61 and *Neechoop Parit Amma* v. *Chathanadiath Kunhikandan* 36 M. 410 took the former view which was accepted by the Full Bench in *Kochu Rabia* v. *Abdur Rahiman* (1913) I. L. R. 38 M. 589. But a later Full Bench of five Judges held that the section saves both kinds of contracts. They held that the word " and " must be read in the section as meaning " or " *Rayarappa Attioti* v. *Kelappa Kurup* I. L. R. 40 M. 594 F. B. Stipulation to pay kuttikanom *i. e* .so much per stump of tree cut is not bad though in a sense it is a restriction on the right of the tenant to claim compensation. To hold

that such a contract is within the mischief of the Act would have been seriously to prejudice the right of the tenant to fix the rent on the land. So long as the provision is a reasonable exercise of the right of the landlord and not an attempted evasion of the Act, the provision should be upheld. *Rajah of Cochin* v. *Kittunni Nair* I. L. R. 40 M. 603 F.B. Stipulation that the spontaneous growth should belong to the landlord and that the landlord should have right to cut and carry away the same would be a restriction on the right of the tenant to claim compensation and would be bad. *Narayani Amma* v. *Kunchikutti Amma* 32 M. L. J. 54.

Provided that.....agreement in writing registered made after the effecting of improvements setting compensation due at the date of such agreement : The proviso is new and was apparently suggested by the decision *Anthala* v. *Kunhadi* I. L. R. 20 M. 495. In that case the tenant agreed to forego his claim to improvements effected till then on the landlord agreeing to submitting to a restriction of rent. The question was whether this contract was bad. Both the courts below held that the contract was bad. The argument before the appellate court was that the words "to make improvements and to claim compensation" would refer only to improvements to be made in future and to compensation which might become due in respect thereof. Mr. Justice Subramania Aiyarwho was in a large measure responsible for the framing of the Act thus argues meeting the contention : "The probability of the tenants being improperly induced to enter into contracts with reference to compensation for improvements already made is certainly not less strong than the likelihood of their entering into such contracts with reference to future improvements. Looking therefore, to the reason of the section in question, there can be little doubt that the legislature intended to prohibit contracts relating not only to future but to past improvements also. This view is confirmed by the provisions of sec. 4 of the Act. The effect of the section is that a tenant shall not, at the time of the eviction, be prejudiced by any custom which will not deprive him of his right to compensation for whatever improvements made during the tenancy, whether by himself or by his predecessors-in-interest. While thus the legislature true to its object, has excluded the operation of custom with regard to improvements made since the creation of the tenancy till the time of the eviction, would it be reasonable to hold that a tenant may, by a contract, prejudice himself in the matter? To so limit the scope of sec.7

would be anomalous and would defeat the clear object of the Legislature." This view is strengthened by the enactment of the proviso. On the construction adopted in the Full Bench *Rayarappa Attioti* v. *Kelappa Kurup* (I. L. R. 40 M. 594) there is no reason to restrict the section to future improvements. A contrary view has indeed been taken in *Kunjunni v. Ramunni* 35 M. L. J. 219 but it is submitted that enough weight has not been attached to these considerations though adverted to.

Crown Lease : Having regard to the Crown Grants Act, notwithstanding this section, the contract governs and the tenant might be disentitled to claim compensation. *Moosa Kutti* v. *Secretary of State* I. L. R. 43 M. 65. *Choyi* v. *Secretary of State* (1921) 14 L. W.386.

Saving clause.

20. Nothing in this Act shall be construed as taking away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act.

This section corresponds to Sec. 7 of Act I of 1887.

Right of any person entitled by law or custom to claim compensation for improvements other than those dealt with by the Act, not taken away.

Trespasser. For instance, the right of the trespasser not being a tenant, if he has a right to improvements under the customary law as stated by the Sub-judge Krishna Menon in A. S. 327 of 1872, Sub-Court Tellicherry, subject to a deduction of one-tenth would not be affected by the Act.

Nor would the right if any, of non-agricultural tenants be affected by the Act.

A tenant may be entitled to compensation in respect of improvements for which he may not be entitled to be paid under the Act by reason of the acquiescence by the landlord. The conditions of liability on that ground are laid down in *Kunhammad* v. *Narayan Musad* I. L. R. 12 M. 320. (1) The landlord must have raised by his conduct an expectation that the outlay had his approval and that the tenant would be reimbursed when he was called on to vacate possession. (2). The acquiescence must have been while the act was in progress. It was assumed that if the landlord raised by his conduct a belief that the improvement had his approval, that would justify the further inference that he also agreed to pay. This may be going too far. Having

regard to the conditions in Malabar, the inference may be more readily drawn than elsewhere but it is by no means a necessary inference. ***Shildas*** v. *Beman Das* 8 B. L. R. 237 on which the case partly proceeds has been the subject of adverse comment in *Beni Lal* v. *Kundan Lal* 21 All. 496 P. C. and according to the ruling of their Lordships the mere erection by the tenant of permanent structures upon the land let to him, to the knowledge of and without interference by his lessor will not suffice to raise any equitable estoppel. Their Lordships say " it was incumbent upon the respondents to shew that the conduct of the owner whether consisting in abstinence from interfering or inactive intervention was sufficient to justify the legal inference that they had, by plain implication, contracted that the right of tenancy should be changed into a perpetual right of occupation " ; to adapt the language to the present context, the tenant should prove that the landlord agreed to pay for the improvement in question.

In so far as improvements dealt with by the Act are concerned the plain implication of the section is that the right to claim compensation under any law or custom as distinguished from a contract dealt with in the previous section is taken away.

MADRAS ACT No. III OF 1896.

MALABAR LAND REGISTRATION ACT.

An Act to make better provision for the registration of proprietors of estates subject to the payment of revenue direct to Government in Malabar and the Wynaad.

WHEREAS Regulation XXVI of 1802 provides that landed property paying revenue to Government shall be registered by the Collector, and whereas such landed property in Malabar and the Wynaad has in many cases not been registered in the names of the proprietors thereof, and whereas it is desirable for the security of the public revenue to provide a summary means whereby the Collector may ascertain such proprietors, it is hereby enacted as follows :—

Preamble.

Short title, Extent.

1. (1) This Act may be called the Malabar Land Registration Act, 1895.

(2) It extends to the whole of the Malabar district and to that portion of the Nilgiri district which is known as South-East Wynaad.

Interpretation clause.

2. In this Act unless there is something repugnant in the subject or context—

Estate.

"Estate" means any land which is subject either now or prospectively to separate assessment to land revenue payable direct to Government.

[*Received the assent of His Excellency the Governor on the 22nd January* 1896 *and of His Excellency the Governor-General on the 21st March* 1896 ; *the Governor General's assent was first published in the "Fort St. George Gazette" of the* 31*st March* 1896.]

Registered.

"Registered" means registered in the public registers maintained by the Collector in accordance with the provisions of Regulation XXVI of

1802.

3. Within such time as the District Collector may fix as hereinafter provided, any person who is or claims to be the proprietor or joint proprietor of an estate and whose name is not already registered, or any other person having authority to act on his behalf, may make application to the District Collector or to an officer empowered by him to receive such application for registration as propritor or joint proprietor of the estate.

Proprietor or joint proprietor of an estate may apply for registration within specified time.

4. The District Collector shall fix for each taluk or such other local area as he may deem fit the date before which the proprietors of the estates situated therein may under the last preceding section apply to have their names registered and may at any time alter any date so fixed.

Collector to fix the date before which proprietor may apply for registration.

Provided that such date or altered date shall not be less than two months or more than four months from the date of the publication of the same in the District Gazette.

Proviso.

5. Every date fixed as provided in the last preceding section shall be notified in the Fort St. George and District Gazettes, and by notices to be posted up at the office of the District Collector, at the offices of the Revenue Divisional officer, District Munsif, Tahsildar, Deputy Tahsildar and Sub-Registrar of Assurances within whose local jurisdiction the local area to which the date applies is situated, and at all police stations and amshom cutcherries within such local area ; and shall also be proclaimed by beat of drum within the local area to which the date applies.

Publication of date fixed by the Collector.

Provided that no irregularity or omission in the publication of the notices or in the proclamations referred to in this section shall affect the validity of any proceedings under this Act.

Irregularity in publication not to affect validity of proceedings.

6. As soon as conveniently may be after the date so fixed, the Collector shall, on a day and at a place to be previously notified in the District Gazette, whether or not an application for registration under the preceding section has been made and whether or not there is any dispute as to the entry to be made in the register, ascertain and determine by such summary inquiry as he thinks fit, in respect of every estate to which the date applies, the person who, in his opinion, is entitled to be registered as proprietor thereof and shall register him accordingly; and if any such estate shall not previously have been separately surveyed or demarcated may cause it to be so surveyed or demarcated or both.

Collector to ascertain by summary inquiry the person to be registered.

Collector empowered to cause survey and demarcation of estate.

7. In the case of an estate belonging to joint proprietors who are members of a joint family or to a religious or charitable foundation, the estate shall be registered in the name of the managing member for the time being of such family or of the trustee, manager or superintendent for the time being of such foundation, as the case may be, who shall be described in the register as such managing member, trustee, manager or superintendent, and such registration shall be as effectual and valid as if made in the names of all the joint proprietors or of all the persons interested in such foundation.

Registration in the case of estates belonging to joint proprietors, or to a religious or charitable foundation.

8. In any inquiry under section 6 the Collector shall hear any party to a dispute who attends on the day notified or on the day to which the inquiry may be adjourned, and shall receive such evidence as he may see fit; and in the case of a dispute he shall record the nature of the dispute, his decision thereon, the grounds of the decision and such other particulars as he thinks fit.

Procedure in inquiries under sec 6.

9. (1) If the person registered under section 6 or section 7 has not made an application under section 3, the Collector shall give him notice of the registration by the publication of the fact in

Notice of the registration to be given in certain cases.

the District Gazette and also, if his address is known, by letter sent by post registered.

Procedure when the person registered objects to the registration on receipt of such notice

(2). If any person to whom notice has been given under this section object to such registration, he may apply to the Collector within two months of the date of the publication of such notice in the District Gazette or within one month of the receipt of the registered letter containing such notice, whichever is later, to have his name removed from the register, and the Collector shall thereupon consider his objections and shall either remove his name from the register or direct its retention therein as he may see fit; in the former case the Collector shall proceed under section 6 as if no such registration had been made.

Registration subject to revision by Collector and modification by Civil Court.

10. Every registration purporting to be made in accordance with the procedure prescribed by this Act—

(i) may be revised by the Collector on application made within three months, and

(ii) shall be subject to any decree or order which may be passed by any Civil Court of competent jurisdiction, provided that in any suit to set aside or modify such registration or in any appeal in such suit, in which suit or appeal an order or decree is passed *exparte* against the Secretary of State for India in Council or against the Collector, neither the said Secretary of State in Council nor the Collector shall be made liable in costs.

Collector to furnish copies of the record on payment of fees.

11. On payment of the prescribed fees the Collector shall furnish to any person who may apply for the same copies of the record of every inquiry held under this Act and of every order and entry made thereunder or under Regulation XXVI of 1802.

Saving of certain provisions of Regulation XXVI of 1802

12. Nothing in this Act shall be deemed to affect the provisions of Regulation XXVI of 1802 in respect of the mutation in the register kept by the Collector under that Regulation of the name of the proprietor registered in accordance with the provisions of this Act when a transfer of the proprietary interest in any estate takes place, whether by purchase, inheritance, gift, or otherwise.

Registered proprietor to be deemed the landholder for the purposes of Madras Revenue Recovery Act.

13. Every person registered as proprietor of an estate shall be deemed to be the landholder in respect of such estate within the meaning and for the purposes of the Madras Revenue Recovery Act II of 1864 and no proceedings taken under the said Act against such person or against any land registered in his name shall be deemed invalid or ineffectual by reason of any error in such registration or on the ground that such person was not the real or sole proprietor.

Joint registration of occupants and proprietors permissible in certain cases.

14. Notwithstanding anything contained in this Act or in Regulation XXVI of 1802 the Collector shall, on the application of the registered proprietor of an estate, register as occupant jointly with such proprietor any person entitled to occupy such estate under an agreement in writing for a period of not less than five years ;

Provided that no such registration shall take place unless such person signifies his consent in writing to such registration or a Civil Court of competent jurisdiction passes a decree, which it is hereby empowered to do, directing such registration in pursuance of a contract entered into between the proprietor and such person whereby the latter has undertaken to pay direct to Government the amount of land revenue assessed on such estate ;

Provided further that such registration shall have effect for the period of such agreement only.

Recovery of arrear of revenue from occupants jointly registered with proprietors.

15. In every case in which an occupant of an estate has been registered under the last preceding section and an arrear of revenue has accrued due in respect of such estate subsequent to such registation, the Collector may take proceedings in the first instance against such occupant under the provisions of the Madras Revenue Recovery Act II of 1864, in so far as they relate to seizure, attachment and sale of moveable property or of the crops or ungathered products of land on which an arrear is due ;

Provisos.

Provided that nothing herein contained shall debar the proprietor from recovering by suit from such occupant the arrear of revenue or portion thereof which, owing to the default of such occupant, has been paid by, or recovered from, him ;

Provided further that nothing contained in this section shall be deemed to affect the power of the Collector to recover from the registered proprietor of such estate under any or all of the provisions of the said Act any arrear of revenue which may be due on such estate or on any other estate registered in the name of such proprietor.

Jurisdiction of Civil Courts barred.

16. Except as otherwise provided by this Act, no Civil Court shall have jurisdiction in any matter which the Collector is empowered by or under this Act to dispose of or shall take cognizance of the manner in which the Collector exercises any powers vested in him by or under this Act.

Payment of costs.

17. All costs of any inquiry or proceeding held before, or of any survey or demarcation directed by, the Collector under this Act shall be payable by the parties concerned and the Collector may pass such orders as he shall think fit in respect of the payment of such costs ; and in the event of such costs not being paid on demand may recover the amount thereof in the same manner as if it were an arrear of land revenue and pay the sum so recovered to the person entitled to receive it.

Orders of District Collector final.

18. Notwithstanding anything contained in Regulations I and II of 1803 of the Madras Code, no appeal shall lie to the Board of Revenue from any order made by the District Collector under this Act.

Saving clause.

19. Subject to the provisions of section 13 nothing contained in this Act and nothing done in accordance with this Act shall be deemed to—

(*a*) preclude the Government or any person from bringing a regular suit for possession of or for a declaration of right to any immoveable property to which the Government or such person may deem itself or himself entitled; or

(*b*) render a registration under this Act an admission on the part of the Government of the right of the person in whose name such estate may be registered or an admission of the validity of the title under which the estate is held; or

(*c*) affect the rights of the Government or of any person in respect of any estate or of any interest therein.

The Board of Revenue may make rules.

20. The Board of Revenue may after previous publication make subsidiary rules for the carrying out of the purposes of this Act, and may prescribe the fees, if any, to be paid for the service of summonses issued under Madras Act III of 1869 in connection with inquiries and proceedings under this Act.

Power to suspend operation of Act.

21. The Local Government may by notification suspend the operation of this Act in any specified portion of the districts to which it applies and may by subsequent notification bring it again into operation.

MADRAS ACT NO. IV OF 1896.

MALABAR MARRIAGE ACT.

An Act to provide a form of marriage for persons following the Marumakkattayam or the Aliyasantana Law.

Preamble.

WHEREAS it is expedient to enable persons following the Marumakkattayam or the Aliyasantana Law of Inheritance to contract marriages which shall be recognized by courts of law as legal marriages and to provide for the issue of such marriges; It is hereby enacted as follows :—

Title and application.

1. This Act may be called " the Malabar Marriage Act, 1896," and it shall be applicable to all Hindus domiciled in the Presidency of Madras following the Marumakkattayam or the Aliyasantana Law of Inheritance.

Definitions.

2. In this Act unless there is something repugnant in the subject or context :

Sambandham.

"Sambandham " means an alliance between a man and a woman by reason of which they, in accordance with the custom of the community to which they belong or either of them belongs, cohabit or intend to cohabit as husband and wife.

Children.

" Children " means sons and daughters of parents whose Sambandham has been registered as a marriage under this Act, whether born before or after such registration ; but shall not include step-sons or step-daughters. In the case of anyone whose personal law permits adoption "children" shall include adopted sons and daughters.

[*Received the assent of His Excellency the Governor on the 14th March 1896, and of His Excellency the Viceroy and Governor-General on the 27th May 1896 ; the Governor-General's assent was first published in the Fort. St. George Gazette of the 16th June* 1896.]

Marriage.

"Marriage" with its grammatical variations and cognate expressions means, except in section 3 clause (*a*), the last word of section 3, clause (*c*), section 15, clause (*a*), and the last word of section 15, clause (*c*), a Sambandham registered under the provisions of this Act.

Tarwad

"Tarwad" means and includes all the members of a joint family with community of property governed by the Marumakkattayam or the Aliyasantana Law of Inheritance.

Condition subject to which a Sambandham may be registered as a marriage.

3. A Sambandham between Hindus both or either of whom follow the Marumakkattayam or the Aliyasantana Law of Inheritance may be registered under this Act as hereinafter provided subject to the following conditions :—

(*a*) Neither party must be subject to a personal law of marriage according to which he or she, as the case may be, cannot validly contract marriage with the other party.

(*b*) The relation of the parties must not be such in respect of consanguinity or affinity that a Sambandham between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs.

(*c*) Neither party must at the date of the notice under section 5 have a husband or wife living whose Sambandham with her or him has been registered under this Act and which marriage is not null and void under section 15 or with whom she or he is otherwise legally married.

(*d*) The parties must not belong to different communities between the members of which, according to the custom or usage applicable to either community, cohabitation is prohibited.

(*e*) The Sambandham must have been formed in accordance with the customary ceremonies, if any, prevailing in the community to which they belong or either of them belongs.

(*f*) A party to a Sambandham who is a minor must have obtained the consent of his or her legal guardian to the registration of the Sambandham as a marriage.

Appointment of Marriage Registrars.

4. The Local Government may appoint one or more Registrars under this Act either by name or as holding any office for the time being for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under the Malabar Marriage Act, 1896," and is hereinafter referred to as the "Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

Registration.

Notice of intention to register a Sambandham to be given to the Registrar.

5. When it is intended to register a Sambandham as a marriage under this Act, both or either of the parties shall give notice in the form (A) to this Act annexed to the Registrar within whose local jurisdiction either of the parties resided at the time when the Sambandham was formed or within whose local jurisdiction it is intended to form it.

Registrar to file such notices and to maintain the "Marriage Notice Book."

6. The Registrar shall file all such notice and keep them with the records of his office and shall also forthwith enter a true copy of all such notices fairly into a book to be for that purpose supplied to him by the Local Government and to be called "The Marriage Notice Book." Such book shall be open at all reasonable times without fee to all persons desirous of inspecting the same.

Copies of notice to be served on interested parties.

7. (1) Every Registrar shall on receiving any such notice forthwith cause a copy thereof to be affixed to a Notice Board in some conspicuous place in his office; and shall then serve or cause to be served at the expense of the party giving such notice a copy thereof on the other party to the Sambandham, if both parties have not joined in giving such notice, on the guardians, if any of the parties thereto, and on the managing members of the Tarwads or families to which they respectively belong.

(2) If at any time before registration is effected the party by whom notice was given under section 5 signifies in writing to the Registrar that he withdraws such notice the Registrar shall, thereupon, at the expense of the party withdrawing the same, communicate the fact of withdrawal to the persons mentioned in sub-section (1).

Withdrawal of notice.

Persons entitled to object to registration of a Sambandham.

Grounds on which objection may be taken.

8. (1) Any person entitled to receive a notice under sub-section (1) of section 7, any member of the Tarwad or family of either party or any person having any expectancy of succession to the property, if any, of such Tarwad or family of either party may within one month from the date of such service of notice object to such registration on the ground that such Sambandham or registration is in contravention of the conditions prescribed in section 3.

Procedure of Registrar if objection is taken.

(2) Such objection shall be in writing signed by the person objecting and shall be presented by the objector or his duly authorized agent to the Registrar who shall file the same in his office, A copy of such objections shall at the expense of the objector be served on the party by whom notice was given under section 5.

(3) On receipt of a notice of objection [a] made under sub-section (1) [a], the Registrar shall not proceed to register the Sambandham as a marriage until the expiry of four months from the receipt of such notice unless such notice is in the meantime withdrawn.

Procedure if no objection is taken.

(4) If no such objection be made under this section and if neither party withdraws the notice under section 7, sub-section (2), such Sambandham may at any time, not being less than one month nor more than six months from the service of the notice under section 7, be registered as a marriage.

[a a] This was substituted for the words " under section 7 " by section I of Madras Act No. 1 of 1898.

The amendments made in sections 8 and 19 by Madras Act No. I of 1898 should be construed as having been inserted at the time of the passing of the Malabar Marriage Act, 1896 (No. I of 1896)—Madras Act No. 1 of 1898, section 3.

9. Any person objecting to the intended registration of Sambandham may, after complying with the provisions of section 8 file a suit in a competent civil court for a declaratory decree declaring that such registration would contravene one or more of the conditions prescribed in section 3.

Person objecting may file a suit in a Civil Court.

10. The Judge before whom such suit is instituted shall thereupon give the person instituting the same a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within four months from the receipt of notice of objection, the Sambandham shall not be registered as a marriage under this Act till the decision of such court has been given and the period allowed by law for appeals from such decision has elapsed : or, if there be an appeal from such decision, till the decision of the Appellate Court has been given or such suit or appeal has been withdrawn or dismissed for default.

Registration to be delayed pending final disposal of suit if certificate of institution is lodged with Registrar.

If such certificate be not lodged within the period prescribed in the last proceeding paragraph, or if the suit by the objector be finally dismissed or withdrawn the Sambandhum may be registered as a marriage.

11. Before a Sambandham is registered as a marriage, the parties thereto and three witnesses shall, in the presence of the Registrar, sign a declaration in the form (B) to this Act annexed. If either party is a minor, the declaration shall also be signed by his or her legal guardian, and in every case it shall be countersigned by the Registrar.

Declaration to be signed before registration.

12. When such declaration has been made, the Registrar shall enter a certificate of mariage in a book to be forn that purpose supplied to him by the Local Government and to be called "The Marriage Certificate Book" in the form (C) to this Act annexed and such certificate shall be signed by the

Registrar to enter certificate of marriage in "The Marriage Certificate Book."

Registrar and countersigned by the parties, three witnesses and if either party is a minor, by his or her guardian also.

Registration at a private residence.

13. Subject to such rules as may be prescribed in that behalf by the Local Government, the Registrar may attend at the private residence of the parties or of the guardian of a party who is a minor for the purpose of such declaration and marriage certificate book being signed by them in his presence.

Fees payable to Registrar.

14. The Local Government shall prescribe the fees payable for the duties to be discharged by the Registrar under this Act.

The Registrar may demand payment of any such fee before the registration of the Sambandham or performance of any other duty in respect of which it is payable.

The said marriage certificate book shall, at all reasonable times, be open for inspection. The registrar shall furnish certified extracts from the marriage certificate book upon payment of the fee prescribed by the Local Government therefor and such extracts shall be admissible as evidence of the due registration as marriage of the Sambandham therein mentioned.

15. (1) A marriage shall be null and void only—

Marriage when null and void.

(a) If either party is subject to a personal law of marriage according to which he or she as the case may be cannot validly contract a marriage with the other.

(b) If a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great-great-grandfather or great-great-grandmother, and by reason of such relationship a Sambandham between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs.

(c) If either party has a husband or wife living whose Sambandham with such party has been registered as a marriage under this Act and such marriage is not null and void under

clauses (*a*) and (*b*) of sub-section (1) or with whom she or he has been otherwise legally married.

(2) A marriage shall not be invalid on the ground that the Sambandham or registration contravenes any of the grounds mentioned in section 3 other than those specified in clauses (*a*) (*b*) and (*c*) of sub-section (1).

Marriage not invalid by reason of irregularity in procedure.

16. (1) No marriage under this Act shall be held invalid by reason of any irregularity in the giving of notice under section 5 or of failure to give notice under section 7 to any person entitled to receive it, or by reason of any irregularity in the publication or service of the copy of such notice or in complying with the provisions of sections 5, 11 and 12.

(2) But when any person entitled to be served with copy of notice under section 7 has not been so served, it shall be competent to him to institute a suit within three months from the date of registration of the Sambandham for cancellation of such registration on all or any of the grounds mentioned in section 3.

Maintenance.

Maintenance of wife and children.

17. (1) The wife and children shall be entitled to be maintained by the husband or father as the case may be. In a civil suit by the wife or children for maintenance, it shall be open to the husband or father to plead all defences open in such a suit to a Hindu governed by the ordinary Hindu law.

(2) Nothing herein contained shall affect the right of the wife and children to be maintained by the Tarwad.

Guardianship.

Guardianship of minor wife and children.

18. When a man's wife and children are minors maintained by him or his Tarwad, he shall, subject to the provision of the "Guardians and Wards Act, 1890," be the guardian of his wife when she is over fourteen years of age and of his children, provided that such guardianship shall not extend to the right and interest of his

wife or children in the property of the Tarwad to which his wife and children belong.

Divorce

Petition for dissolution of marriage.

19. A husband and wife or either of them may present a petition for dissolution of the marriage in the court of the District Munsif within the local limits of whose jurisdiction either the husband or wife or in cases in which one of them alone is petitioner the respondent has permanent dwelling or actually and voluntarily resides or carries on business or personally works for gain at the time when the petition is presented.

[a] *Explanation.*—For the purposes of this section the Madras City Civil Court shall be deemed to be the Court of the District Munsif in respect of the area within the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Madras.

Notice to be given to other party, if petition is not joint.

20. A copy of such application when made by one party alone shall be served on the other party to the marriage at the expense of the petitioner.

Court to declare marriage dissolved on motion made within a specified period.

21. Six months after the presentation of a petition by both parties or in cases where the application is made by one party alone six months after the service of notice under section 20, the court shall, on the motion of the applicants or applicant, declare in writing the marriage dissolved; provided that such motion is made within seven days after the expiration of the six months or if the court is closed then that such motion is made on the day on which the court is re-opened. Upon such declaration the marriage shall be deemed dissolve dfrom the date of such declaration; and no declaration made under this section shall be held invalid by reason of any irregularity in complying with the provisions of

[a] This was added by section 2 of Madras Act No. I of 1898. Please see also footnote to S. 8 (3).

sections 19, 20 and 21. If no such motion is made within the time hereinbefore prescribed the court shall dismiss the petition.

Maintenance when claimable by divorced wife.

22. Where a marriage has been dissolved without the consent of the wife, she shall, notwithstanding such dissolution, be entitled to claim maintenance from the husband so long as she remains a Hindu, continues chaste, and does not form a Sambandham or contract a marriage provided that she was not guilty of adultery uncondoned before such dissolution.

Succession to separate property of a married man dying intestate.

23. Where a man following the Marumakkathayam or the Aliyasantana Law of Inheritance dies intestate in respect of his self-acquired or separate property or any portion thereof, one-half of such property or in the event of no member of his Tarwad surviving him the whole of such property shall devolve on his widow if he leaves no children, or on his children in equal shares if he leaves no widow, or on his widow and children in equal shares if he leaves both widow and children.

Succession to separate property of a married woman dying intestate.

24. Where a woman following the Marumakkathayam or the Aliyasantana Law of Inheritance dies intestate in respect of her separate or self-acquired property or any portion thereof one-half of such property shall devolve in equal shares upon her children and, in the event of no member of her Tarwad surviving her, the whole of such property shall devolve on her husband.

Service of notices under this Act.

25. Copies of notices under sub-section (1) of section 7 notice of withdrawal under sub-section (2) of section 7, copies of objections under sub-section (2) of section 8, shall be served through such officer or court as the Local Government may direct in this behalf, and the law in force for the time being for the service of summons on a defendant in a civil suit shall apply to such service.

FORM (A).

SECTION 5.

Notice of marriage.

To

———— , a Registrar of Marriages under Act for the District of .

I hereby give you notice that I intend registering as a marriage under Act the Sambandham between me and the other party herein named and described :—

Name.	Names of tarwad and of the managing member thereof.	Names of the legal guardians (if any).	Rank or profession or calling.	Residence.	Age.	Caste.	The place in which the Sambandham was formed or is intended to be formed.
A.B. ...							
C D. ...							

Witness my hand, this day of 192

(Signed)

———

FORM (B).

SECTION 11.

Declaration to be made separately by the Bridegroom and by the Bride.

I, A. B., hereby declare as follows :—

(1) I am a Hindu governed by the Law of Inheritance.

(2) I am years of age.

(3) The registration of my Sambandham with will not contravene any of the conditions prescribed in section 3 of Act.

(4) I consent to the registration as a marriage of the Sambandham between me and C.D. [or, if the party making the declaration is a minor, "(4) my legal guardian consents to the registration as a marriage of the Sambandham between me and C.D. "].

(5) I am aware that, if any statement in this declaration is false and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and fine.

(Signed) A. B. (the Bridgeroom or Bride).

(Signed) G. H.)(„) E. F. (Guardian, if any).
(„) I. J. } Three witnesses. (Countersigned) M.N.,
(„) K. L. } *Registrar of Marriages under Act*
for the District of

FORM (C).

SECTION 12.

Marriage Certificate.

I, E.F., certify that, on the of 192 appeared before me A.B. and C.D., each of whom in my presence and in the presence of three witnesses, whose names are signed hereunder, made the declarations required by Act and that the Sambandham between them was registered as a marriage under the said Act in my presence.

(Signed) E. F.,
Registrar of Marriages under Act
for the District of

(Signed) A.B.
(„) C.D.
(Signed) G. H. } („) M.N. (Guardian,
(„) I. J. } Three witnesses. if any).
(„) K. L. }

Dated the day of 192

MADRAS ACT No. V OF 1898.[1]

MALABAR WILLS ACT.

An Act to declare the testamentary power of persons governed by the Marumakkathayam or the Aliyasantana law of Inheritance; and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

Preamble.

WHEREAS doubts have arisen regarding the testamentary power of persons governed by the Marumakkathayam or the Aliyasantana law of Inheritance; aed whereas it is expedient to remove such doubts, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons; It is hereby enacted as follows :—

PART I.

PREAMBLE.

Short title.

1. (1) This Act may be called the Malabar Wills Act, 1898.

Local extent

(2) It extends to the whole of the Presidency of Madras; and

Commencement.

(3) It shall come into force on such date [2] as the Local Government by notification shall appoint in this behalf:

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1 [*Received the assent of the Governor on the 9th July*, 1898: *and that of the Governor-General on the 3rd August*, 1898].

For Statement of Objects and Reasons—*see* Fort St. George Gazette Supplement, dated 24th November, 1896, p. 2; for Report of the Select Committee *see ibid*, dated 8th May, 1898; for Proceedings in Council, *see ibid.*, dated 12th January, 1897, p. 23; *ibid*, dated 9th March 1897, p. 45; *ibid.*, dated 1st February, 1898, p. 13; *ibid.*, dated 3rd May, 1898, p. 34; *ibid*, dated 12th July, 1898, p. 3

The Governor General's assent to this Act was published in the Fort St. George Gazette, dated 16th August, 1898.

2 The Act came into force on 2nd September, 1898—*see* Fort St. George Gazette, 1898, Pt. I, p. 818, Notification No. 421, 2nd September, 1898.

Interpretation-clause.

2. In this Act, unless there be something repugnant in the subject or context,—

"Minor."

(1) "minor" means any person who shall not have completed the age of eighteen years:

XXI of 1870.

Provided that nothing in this Act shall be deemed to affect the Hindu Wills Act, 1870 [1].

"Will."

(2) "Will" means any legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death:

(3) "codicil" means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will.

PART II.

OF WILLS.

Persons to whom this part shall apply.

3. This part shall apply to persons domiciled in the Presidency of Madras who are governed by the Marumakkathayam or the Aliyasantana law of Inheritance.

Persons capable of making wills.

4. Every person of sound mind and not a minor may by will dispose of property which he could legally alienate by gift *inter vivos* and shall be deemed to have been always competent so to dispose of such property.

Explanation I.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will, if they are able to know what they do by it.

Explanation II.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation III.—No person can make a will while he is in such a state of mind whether arising from drunkenness or

1 Printed, General Acts, Vol II

from illness or from any other cause that he does not know what he is doing.

Will obtained by fraud, coercion or importunity.

5. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will may be revoked or altered.

6. A will is liable to be revoked or altered by the maker of it any time when he is competent to dispose of his property by will.

Saving clause.

7. Nothing contained in section 4, shall—

(*a*) affect any right established before the commencement of this Act by a final decree of a Court of competent jurisdiction ;

(*b*) authorize a testator to deprive any persons of any right of maintenance of which, but for section 4, he could not deprive them by will ;

(*c*) affect any law of intestate succession or authorize any testator to create in property any interest which he could not have created prior to this Act.

PART III.

OF THE EXECUTION, ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

Persons to whom this part shall apply.

8. This part shall apply to persons governed by the Marumakkathayam or the Aliyasantana law of Inheritance, whether they are domiciled in the Presidency of Madras or not.

Execution of wills and codicils.

9. All wills and codicils made on or after the date of the commencement of this Act within the Presidency of Madras, and all such wills and codicils made outside the said Presidency so far as relate to immoveable property situated within the said Presidency, must be executed according to the following rules :—

1*st*.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

2*nd*.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

3*rd*.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

10. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

Witness not disqualified by interest or by being executor.

11. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Revocation of will or codicil.

12. No will or codicil, nor any part thereof, shall be revoked otherwise than by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Effect of obliteration, interlineation or alteration in a will.

13. No obliteration, interlineation or other alteration made in any will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will ; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum refering to such alteration, and written at the end or some other part of the will.

Rivival of a will or codicil.

14. No will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same ; and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Execution and revocation of will or codicil by soldiers or mariners.

15. No will or codicil made by a soldier employed in an expedition or engaged in actual warfare or by a mariner at sea and no revocation by such person of his will or codicil shall be deemed invalid by reason only of such will, codicil or revocation not being made in accordance with the provisions of this part.

MADRAS ACT No. I of 1918.

MAPPILLA SUCCESSION ACT.

An Act to amend and define the law of intestate succession among Mappillas governed by the Marumakkathayam or the Aliyasantana Law of Inheritance.

Preamble.

WHEREAS it is expedient to amend and define the rules of law applicable to intestate succession among Mappillas governed by the Marumakathayam or the Aliyasantana Law of Inheritance ; It is enacted as follows :—

Short title.

1. (1) This Act may be called the Mappilla Succession Act, 1918.

Local extent.

(2) It extends to the whole of the Presidency of Madras.

Persons to whom this Act is applicable.

(3) It applies to Mappillas domiciled in the Presidency of Madras who are governed by the Marumakkattayam or the Aliyasantana Law of Inheritance, and also, in respect of immovable property situated within the Madras Presidency, to Mappillas domiciled outside the said Presidency who are so governed.

Property in respect to which a deceased Mappilla is considered to have died intestate.

2. A person is considered to die intestate in respect of all property of which he has not made a testamentary disposition capable of taking effect.

Explanation.—"Property" in this section does not include tarwad property unless the person dying intestate was exclusively entitled to it.

Received the assent of the Governor on the 3rd May 1918 and that of the Governor-General on the 25th May 1918 ; the assent of the Governor-General was first published in the "Fort St. George Gazette" of 11th June 1918.

3. Such property shall, notwithstanding any custom to the contrary, devolve upon his heirs in the order and according to the rules of Muhammadan Law.

Devolution of such property.

The Jenmai and Kudiyan Regulation. 1071 [1] (*Travancore.*)

A Regulation to define clearly the relative rights of Jenmis and Kudiyans and to make provision for the speedy realisation of Michavarom and other proprietary dues from the Tenants.

Whereas it is expedient for better carrying out the intention of the Royal Proclamation of the 25th Karkadakom 1042, to define clearly the relative rights of Jenmis and Kudiyans in Travancore, to make further provision for the speedy realisation of Michavarom and other customary proprietary dues and to invest the District Munsiffs and Zillah Judges with summary jurisdiction in petty claims for Michavarom and other dues ;

Preamble.

We are, in supersession of the Royal Proclamation above referred to, hereby pleased to enact as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Regulation may be called the " Travancore Jenmi and Kudiyan Regulation of 1071. "

Short title.

(2) It shall come into force throughout Travancore on the first day of Makarom 1072.

Provided that para. 2 of S. 5 and the 1st para of S. 44 shall come into force on the first day of Chingom 1074.

2. Nothing in this Regulation shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom and customary rights.

3. The following expressions shall have the meanings hereby assigned to them unless there is something repugnant in the subject or context.

Interpretation clause.

(1) " Jenmom land " means land (other than Pandaravagay, Sreepandaravagay, Kundukrishi or Sircar Devaswom land, re-

1. Passed by His Higness the Maharaj of Travancore on the 3rd July 1892 (21st Mithunom 1071.)

cognised as such in the Sircar accounts) which is either entirely exempt from Government tax or if assessed to public revenue, is subject to Rajabhogam only, and the occupancy right in which is created for a money consideration (Kanom) and is also subject to the payment of michavarom or customary dues and the periodical renewal of the right on payment of renewal fees.

Explanation—Rajabhogam includes Rajabhogam paid to a Chief within whose free-hold estate the land is situate.

(2) " Jenmi " means a person in whom the proprietary right over Jenmom lands is vested and includes, in the case of Devaswoms owning Jenmom lands, the managing Trustee or Trustees of the Institution for the time-being.

(3) " Kudiyan " means a person who holds lands on kanapattom tenure.

(4) " Kanapattom " means a demise of Jenmom land made or renewed by the Jenmi by whatever name such demise is designated.

(5) " Kanom " means the *Arthom* or consideration (in money or in kind) paid for the kanapattom and shall also include the value of improvements made by Kudiyans and treated as *Arthom* or consideration.

(6) A person is said " to hold land " whether he retains it in his actual possession or whether he mortgages or sub-lets it ; and a person shall be deemed to have held land if it has been held by himself or by a predecessor in interest or title through whom he claims.

(7) " Holding " means a parcel of land or parcels of land held under one kanapattam instrument and one set of conditions.

(8) " Sub-tenant " means any person who holds land under a Kudiyan.

(9) " Pattom " means the assessed rent of the holding prior to the deduction of interest due to the Kudiyan on the Kanom in order to determine the Michavarom due to the Jenmi.

(10) " Michavarom " means the residual rent which is payable or deliverable annually under a kanapattom by the Kudiyan to the Jenmi whether in money or in kind and includes services due in lieu of rent.

(11) " Renewal fees " means the fee or fees payable on renewal of Kanapattom, under such denominations as Adukuvathu, Avakasom, Sakshi, Oppu Thusi, Olappanam, Thirunalkalcha, and the like.

(12) " Customary dues " means the cesses or contributions such as Onakalcha, Allakkada, Thirunal-chumadu, Purannalchumadu, Vara-koppu, Oolsava-koppu and the like which are payable to the Jenmi by the Kudiyan on account of his holding according to contract or custom.

(13) " Duly registered " means registered in accordance with the law for the time being in force relating to the Registration of Assurances.

(14) " Improvement " means, with reference to a holding, any work including its product which is suitable to the holding and consistent with the conditions on which it is based, by which the value of the holding has been and continues to be increased, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Explanation 1 :—It includes among other things—

(*a*) the construction of wells and other works for the storage or supply of water for agricultural or domestic purposes ;

(*b*) the construction of works for drainage and for protection against floods ;

(*c*) the planting of trees ;

(*d*) the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature ;

(*e*) the erection in Purayadoms or plantations of farm buildings and of dwelling-houses, cattle-sheds or other structures, permanent walls or strong fences which are not of a temporary nature ; and

(*f*) The renewal or reconstruction of any of the foregoing works or such alterations or additions thereto as are not of the nature of mere repair and as durably increase their value.

But it does not include such clearances, embankments, levellings, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivation and without any special expenditure or any other benefit accruing to land from the ordinary operations of husbandry.

Explanation II.—A work executed by a Kudiyan is not an 'improvement' if it substantially diminishes the value of any other part of his Jenmi's property.

CHAPTER II.

OF THE RIGHTS AND LIABILITIES OF JENMIS AND KUDIYANS.

Tax on Jenmom lands transferred by sale, etc, to be borne by transferee.

4. When a Jenmi transfers by sale, gift or otherwise, the Jenmom right in the whole or any part of his Jenmom lands and the Sircar imposes or enhances the tax on the Jenmom lands transferred, such tax shall be borne by the transferee.

Right of Kudiyan to permanent occupancy.

5. Subject to the provisions of this Regulation, every Kudiyan shall have a right of permanent occupancy in his holding and shall be exempt from liability to eviction save as laid down in S. 7.

In the absence of an express contract, nothing in this section shall be taken to confer the right of permanent occupancy on the Kudiyan of a non-Malayalee-Brahmin Jenmi, unless he or his predecessors in interest or both have uninterruptedly held the holding for a period of not less than twenty-five years.

The provisions of para 2 do not apply to assignees of Malayalee-Brahmin Jenmis.

Right of Kudiyan heritable and transferable.

6. The right of a Kudiyan in his holding shall be heritable and transferable; but every transfer shall be in writing and no transfer of a portion of the holding without the consent, in writing, of the Jenmi, shall affect the liability of the entire holding for Michavarom and other dues leviable by the Jenmi.

Eviction of Kudiyan.

7. (1) No Kudiyan shall be evicted from his holding or any portion of his holding except in execution of a decree of Court and no Court shall make a decree for such eviction except for—

(*a*) non-payment of Michavarom for 12 years consecutively, notwithstanding an express demand in writing made at any time after the first year's arrears shall have accrued.

(*b*) neglect or refusal to pay renewal fees and take a renewal within one year from the date on which such fees fall due and six months after the service upon him of a notice of demand in writing.

Provided that, when such neglect or refusal has taken place before this Regulation comes into force, it shall not confer on the Jenmi the right of eviction unless he proves that such neglect or refusal has been continued for a period of one year after this Regulation comes into force and six months after service upon him of a notice of demand in writing under this Regulation.

Explanation :—Failure to pay renewal fees or take a renewal, due to *bona fide* differences between the Jenmi and the Kudiyan as to the amount of the renewal fees or as to the terms of the renewal, shall not be deemed to be neglect or refusal within the meaning of clause (*b*)

(*c*) wilful denial of Jenmi's title and persistence in such denial even at the time of the first hearing of a suit for eviction:

Explanation.—A denial of the Jenmi's title under a mistake of fact or of law is not wilful within the meaning of clause (*c*).

(*d*) intentional and wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding so as to injure the interests of the Jenmi.

(2) The written demand or notice mentioned in this section shall be presented to the Court of the District Munsiff in whose local jurisdiction the holding is situated and it shall be served by such Court on payment by the Jenmi of the pres-

cribed process fees in the manner provided for the service of summons in the Code of Civil Procedure. But no court fees shall be levied on the application presented to the Court by the Jenmi requesting the service of such demand or notice.

(3) A suit for ejectment on the ground stated in clause (*d*) shall not be entertained unless the Jenmi has served a notice on the Kudiyan specifying the particular act of waste complained of, and, when the waste is capable of remedy, requiring the Kudiyan to remedy the same and in any case to pay reasonable compensation for the waste, and the Tenant has failed to comply within a reasonable time with that request.

(4) In case of eviction the Kudiyan shall, in addition to a refund of the Kanom money, be entitled to be compensated for improvements made by him or by his predecessors in interest for which compensation has not already been paid; and his sub-tenants if any, shall also be entitled to such compensation in respect of improvements made by them.

Explanation :—Nothing in this section shall be construed to bar the right of the Jenmi to recover the arrears of Michavarom and customary dues due at the date of eviction.

Compensation for improvements how estimated.

8. (1) The compensation to be awarded for items of improvement (*a*) (*b*), (*d*), (*e*) and (*f*) in clause 14 of S. 3 shall be the estimated full cost of such improvements *minus* any deduction for wear and tear; and the compensation for item (*c*) shall be three-fourths of capitalized value of the product of the trees other than wild trees of spontaneous growth, unless the Jenmi proves that, by local usage in respect of Jenmom lands, the compensation to be awarded to the Tenant for trees is less than three-fourths.

(2). In awarding compensation for improvements any reduction or remission of rent or any other advantage given by the Jenmi to the Kudiyan in consideration of the improvement shall be taken into consideration and no compensation for an improvement shall be claimable when the Kudiyan has

made the improvement in pursuance of a contract in writing binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

Court to cancel forfeiture on payment of arrears into Court.

9. When the Kudiyan has incurred forfeiture for non-payment of Michavarom or renewal fees and the Jenmi sues to eject the Kudiyan—if, at the first hearing of the suit, which shall not take place within three months from the date of the service of the original summons in the suit, the Kudiyan pays into the Court the Michavarom and other dues in arrears together with the interest thereon and the Jenmi's cost of the suit, the Court shall pass an order relieving the Kudiyan against forfeiture : and thereupon the Kudiyan shall hold the land as if the forfeiture had not occurred.

Decree to declare amount of compensation in suit for ejectment of Kudiyan for waste.

10. A decree passed in favour of the Jenmi in any suit for ejectment of a Kudiyan on the ground that he has committed intentional and wilful acts of waste, shall declare the amount of compensation which would reasonably be payable to the Jenmi for the waste, and whether in the opinion of the Court the waste is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay the amount to the plaintiff and, where the waste is declared to be capable of remedy to remedy the same.

If the Defendant, within the period fixed by the Court under this section, pays the compensation mentioned in the decree and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Renewal of Kanapattom every twelve years.

11. In the absence of an express written contract to the contrary, on the expiry of a period of twelve years from the date of every Kanapattom, and thenceforward at the end of every successive period of twelve years, it shall be obligatory on

the Jenmi to give and on the Kudiyan to accept a renewal of the Kanapattom, save and except in the cases mentioned in the next following section.

Kudiyan may surrender his holding at the end of twelve years.

12. A Kudiyan may, at the end of twelve years from date of Kanapattom or of the last renewal, surrender in writing his holding to the Jenmi after six months' notice in writing, and claim refund of the Kanom. In such cases, the Jenmi shall not be liable to pay to the Kudiyan the value of the improvements and he shall not be bound to accept the surrender, unless the whole of the arrears of Michavarom and other dues, if any, are also tendered at the time of surrender.

Notice under this section shall be served through the Munsiff's Court in the manner provided in S. 7.

Arrears of Michavarom and renewal fees to have priority over other charges.

13. Arrears of Michavarom and renewal fees due to the Jenmi shall be a charge on the holding of a Kudiyan and shall have priority over all other charges on the same, save arrears of tax due to Government.

Enhancement of Michavarom.

14. Subject to the limitations and conditions prescribed in Chapter III, every Jenmi may, at the time of periodical renewals of Kanapattom, enhance the Michavarom payable by a Kudiyan,

(1) (*a*) by increasing the Pattom assessment on the land.

(*b*) by reducing the rate of interest allowed to the Kudiyan on the Kanom money, if such rate is in excess of the rate usually allowed to Kudiyans holding on Kanapattom in the same property.

(*c*) by both the modes (a) and (b) or

(2) where the Jenmi has hitherto been levying additional Kanom (or Ettartham) in lieu of enhancing the Michavarom, he may continue to do so at the customary period.

Provided that no Jenmi shall, without the cosnent of the Kudiyan, be entitled to enhance the Michavarom and levy Ettartham at one and the same time.

CHAPTER III.

PART A. OF MICHAVAROM AND CUSTOMARY DUES.

Particulars of Kanapattom contract.

15. (1) In every contract of Kanapattom granted or renewed after this Regulation comes into force,

(*a*) the name, description and extent of the holding,

(*b*) the Pattom assessed on the holding,

(*c*) the deductions therefrom on account of interest on the Kanom money,

(*d*) the amount of Michavarom agreed upon,

(*e*) the renewal fees and customary dues intended to be levied from the Kudiyan, and the rate at which and the occasions on which they are to be levied, and

(*f*) if customary dues are commuted under section 26 the amount so commuted,

shall be distinctly specified.

(2) (*a*) If the Michavarom or other dues are made payable in kind, it shall be specified according to the standard measure or parah prescribed by our Government or which may be agreed upon between the parties.

(*b*) If any local parah or measure is used by the parties, the difference between it and the Government standard parah must be set forth in the Kanapattom.

(3) Registering officers shall refuse to accept for registration any Kanapattom instrument unless it shall contain the particulars above set forth. The order of the Registrar shall be subject to appeal according to the provisions of the Registration Regulation for the time being in force.

When suit or claim for renewal fees or customary dues to be entertained.

16. No summary suit or claim for enforcing payment of renewal fees or customary dues shall be entertained by the Courts under this Regulation unless such fees or dues, as the case may be, are specified in the Kanapattam or itsc ounterpart duly registered.

Exception.—Nothing in this section shall affect the Jenmi's right to recover summarily the renewal fees or customary dues

under the existing Kanapattom though not expressly specified in the instrument of Kanapattom.

Payment of Michavarom, reneval fees etc.

17. Every Kudiyan shall pay his Jenmi the Michavarom, renewal fees and customary dues at such time and place as may be agreed upon between them in writing, and, in the absence of such written agreement, in the manner following, namely:—

(*a*) the annual Michavarom shall be paid on or before the thirtieth day of Audi of each Malabar year at the residence or at the granary (Sekarippoo) of the Jenmi, provided that such residence or Sekarippoo is within the Proverthy in which the holding is situated.

(*b*) customary dues, after demand—except in cases where they become due on recognised dates, such as Onakalcha.

(*c*) renewal fees on or before the last day of the year following the period when the renewal of the Kanapattom ought to take place under section 11.

Rate of interest in default of payment.

In default of such payment, interest shall be charged on the arrears from the date they become due at the rate of 12 per cent per annum when the arrears are payable in money, and of 18 per cent. per annum when the arrears are payable in kind.

Jenmi to renew kanapattom as payment of renewal fees.

18. On payment by the Kudiyan of the renewal fees together with any arrears of Michavarom which may remain unpaid for the whole or any portion of the expired period of 12 years, the Jenmi shall renew the Kanapattom and the Kudiyan shall thereupon execute a counterpart of such Kanapattom.

Provided that when a Kanapattom and its counterpart containing the particulars specified in section 15 and duly registered shall have been once before exchanged between a Jenmi and his Kudiyan, the parties may by mutual agreement dispense with the execution of a fresh Kanapattom and counterparts. In such case a receipt for payment of renewal

:es shall, if duly registered, be deemed to operate to all intents nd purposes as a renewal of the Kanapattom.

Contents of receipt for Michava om.

19. Every Kudiyan paying Michavarom or customary dues shall be entitled to a receipt specifying

(*a*) the date of payment,

(*b*) the amount paid,

(*c*) the period for which it is paid,

(*d*) the holding in respect of which it is paid and

(*e*) such other particulars as may be necessary to elucidate the transaction.

Revision of terms on renewal of anappattom,

20. (1) Every revision or re-adjustment of the terms of a Kanapattom at the end of 12 years shall be made by a contract in writing duly registered.

(2) If the parties cannot agree as to the terms of such evision or re-adjustment or as to the amount of additional Kanom or Ettartham, the Jenmi or the Kudiyan, as he case may be, may institute a regular suit in a Civil Court of competent Jurisdiction for the purpose of compelling the other party to accept the terms proposed by him, or such other erms as to the Court may seem fit.

(3) Notwithstanding anything contained in the Stamp Regulation, no such contract of Kanapattom executed in renewal of a prior contract of Kanapattom shall be subject to stamp duty when the annual Michavarom reserved in such renewed Kanapattom does not exceed Rs. 50 in value.

(4) In the absence of an express contract to the contrary, he cost of stamp and registration of Kanom deeds shall be borne by the Kudiyan and the cost of stamp and registration of counterparts or Kychits by the Jenmi.

When Jenmi entitled to claim enhancement of Pattom.

21. The Jenmi of a holding shall not be entitled to claim an enhancement of the Pattom assessment fixed under any existing Kanapattom except on one or more of the following grounds, *viz.*

(*a*) In the case of paddy lands,

(1) that the area of the holding actually under cultivation is in excess of area on which the Pattom was previously fixed ;

(2) that the rate of current Pattom is below the prevailing rate for lands of a similar description and quality, with similar advantages in the same Elai or Muri and that there is no reason for the holding being assessed at so low a rate ;

(3) that the productive powers of the land comprised in the holding as compared with those powers at the time when the current Pattom was fixed, have increased from causes not merely temporary or casual.

(*b*) In the case of other lands, in addition to the foregoing grounds,

(4) that the number of trees in the holding on which Pattom is assessable has increased,

(5) that there has been a substantial rise in the average local prices of the produce of those trees during the currency of the previous Kanapattom.

(c) In the case of either description of land,

(6) that after this Regulation comes into force the Kudiyan erects factories, shops or other buildings not being erections referred to in (e) of Explanation I to Clause 11 of section 3 and the annual rental value of the holding has thereby increased.

When the excess to the area under cultivation or the increase in the productive powers of the land is due to reclamation or other works of permanent improvement effected at the expense of the Kudiyan, the cost of such reclamation or other works of improvement shall be estimated and interest on the capital outlay so estimated shall be deducted from the difference between the old and new assessment and allowed to the Kudiyan at the same rate at which the interest on the Kanom money is allowed to the Kudiyan under the Kanapattom.

Where an enhancement is allowed on garden lands, Nadavukoor or deductions on account of the cost of planting and rearing the trees sought to be assessed with the Pattom, shall be allowed to the Kudiyan at such rate as may have been agreed

upon between him and the Jenmi, and in the absence of such agreement, at the usual rate prevailing in the Proverthy in which the land is situated.

Where enhancement is allowed on the ground mentioned in clause (6) the rental value shall be the annual rental of the building according to the rates prevailing in the neighbourhood less interest at 6 per cent. per annum on the value of such building and the cost of maintenance.

Rate of assessment of Pattom.

22 (*a*) The Pattom on paddy lands shall not exceed one-fourth of the gross produce.

(*b*) The Pattom on other lands shall, in like manner, not exceed one-fourth of the estimated average annual yield of the trees growing thereon, commuted into money at the average market rate, the average being based upon the market price of the different kinds of staple produce for 12 years preceding. If no such trees exist, the Pattom shall be taken to be equal to the Payattupattom prevailing in the Proverthy.

(*c*) The Pattom on buildings shall be one-half of the rental value fixed under the last para of the preceding section.

(*d*) The Pattom so assessed shall be subject to deduction on account of interest on the Kanom money but not on account of existing Sircar tax or customary dues and renewal fees which shall be paid by the Kudiyan out of his share of the produce.

Provided that the existing Pattom shall not be disturbed for the reason only of its being above or below the proportion fixed under this section.

Amount of ettartham leviable, on renewal of kanapattom.

23. The amount of additional Kanom or Ettartham leviable by the Jenmi at the time of renewal of Kanapattom when such is leviable under the provisions of this Regulation, shall not, without the consent of the Kudiyan, exceed six times the amount of the enhanced Michavarom which would have been payable by the Kudiyan, had the Jenmi claimed such enhancement under the provisions of Ss. 20 and 21.

Kudiyan may claim reduction of Pattom in certain cases.

24. A Kudiyan may, at the time of renewal, claim reduction of Pattom on the grounds,

(*a*) that the area of his holding has been diminished, not by his neglect, but by the action of sea, river or lake, or like causes,

(*b*) that the soil of the holding has, without the fault or neglect of the Kudiyan, become permanently deteriorated,

(*c*) that in the case of gardens there has been a fall in the average local prices of the produce of the trees in the holding during the currency of the current Kanapattom,

(*d*) that the number of assessable trees in the holding has substantially diminished by causes not preventible by the Kudiyan,

(*e*) that the rate of the current Pattom of his holding is above the prevailing rate for similar lands in the village in which it is situated.

Courts not to decree unfair enhancement and abatement.

25. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement or abatement which is, under the circumstances of the case, unfair or inequitable.

On transfer of Jenmom right Kudiyan entitled to customary dues commutted intofixed annual payment.

26. In the case of a transfer of Jenmom right it shall be competent to the Kudiyan to call upon the transferee to commute customary dues into fixed annual payment. The transferee shall comply with such demand. If they disagree as to the rate of commutation, the Court shall decide what shall be the fair and equitable rate.

PART B. DEPOSIT OF RENT AND CUSTOMARY DUES IN COURT.

Kudiyan may apply to Muusiff's Court for leave to deposit Michavarom on Jenmi's failure to accept tender.

27. If any Kudiyan tenders to the Jenmi full payment of Michavarom or renewal fees or other dues as they fall due and if the Jenmi is not ready or willing to accept the tender and grant a receipt forthwith, or if the Kudiyan entertain a *bona fide* doubt as to the party entitled to receive the Michavarom and other dues, the

Kudiyan may apply to the Munsiff's Court, within whose jurisdiction the holding is situated, for leave to deposit such amount in Court to the credit of the Jenmi.

Contents of application.

28. The application shall specify as far as possible,

(*a*) the name of the Jenmi and his description when known, and, in case of doubt, the name and description of all the rival claimants,

(*b*) the local name, description and extent of the holding,

(*c*) the particulars of the tenure on which the holding is held by the Kudiyan,

(*d*) the full amount of Michavarom or customary dues due up-to-date, and,

(*e*) the circumstances under which the application is made, as shall be verified in the manner prescribed by the Code of Civil Procedure for the verification of plaints.

Michavarom and other dues due up to date of application to be paid into Court.

29. The amount of Michavarom or other dues specified in cl. (*d*) of S. 28 shall be paid into Court at the time of the application, the price of grain or other commodities payable as Michavarom or dues being commuted into money at market rates.

Munsiff to issue notice to Jenmi,

30. The Munsiff shall, upon such payment as aforesaid, issue a notice to the Jenmi or other persons named in the application mentioned in S. 28, calling upon him or them to show cause why the payment should not be accepted and a receipt granted to the Kudiyan.

Further procedure

31. (1) On the day fixed for the appearance of the parties or on any other day to which the hearing of the application may be adjourned, the Munsiff shall hear the objections, if any, of the Jenmi or other parties claiming the right to receive the Michavarom and dues, and on being satisfied that full amount due up to date has been paid into Court by the Kudiyan and that the Kudiyan is entitled to make the application, shall grant a receipt in the form prescribed by S. 19.

(2). If the amount paid into Court be less than what is justly due to the Jenmi at the date of the application, the Munsiff shall reject the application and return the deposit unless the Kudiyan offers to make good, and does make good, the deficiency within six weeks from the date of the order by the Munsiff to make good the same.

(3). In all cases where a receipt is granted by the Court, the deposit shall be paid over to the Jenmi or other party appearing to be entitled to the deposit. In cases of dispute as to the person entitled to receive the deposit, the Munsiff may take security from the person in whose favour he adjudges in the summary investigation before making the payment.

(4). Nothing in this section shall affect the right of any party to contest by a regular suit the decision passed under clause (1) or to recover the amount paid from the party receiving the deposit under the summary order of the Court.

(5). A receipt granted by a Court under clause (1) shall operate as a full acquittance for the amount paid into court and shall have the same force and effect as a receipt granted by the Jenmi himself.

Application under part B to be exempt from Court fees.

32. Every application made under this part B shall be exempt from payment of Court fees.

PART C. OF THE JURISDICTION OF COURTS OVER PETTY CLAIMS FOR MICHAVAROM AND CUSTOMARY DUES.

Summary jurisdiction of Courts.

Claims by Jenmis for recovery of arrears of Michavarom, renewal fees or customary dues shall, when the amount or value of such claim does not exceed Rs. 100, be taken cognizance of and disposed of summarily by the Courts hereinafter mentioned.

(1) District Munsiffs shall have jurisdiction in respect of all such claims where the amount or value of the claim does not exceed Rs. 30.

(2) Zillah Judges shall have similar jurisdiction where the amount or value of the claim exceeds Rs. 30 but does not exceed Rs. 100.

34. Except, as otherwise provided by this Regulation, the procedure prescribed by any law for the time being in force for the trial of non-appealable cases shall be the procedure to be followed by the District Munsiffs and Zillah Judges in all suits and proceedings summarily cognizable by them under this Regulation.

Procedure for trial of non-appealable cases to be followed in summary suits under the regulation.

35. The cause of action for recovery of such claims shall be deemed to have arisen at the place where the holding, in respect of which the claim accrued, is situated and the suit shall, subject to the provisions of S. 33 clauses, 1 and 2 be preferred to the Court within the limits of whose territorial jurisdiction the cause of action shall have arisen as aforesaid.

Where cause of action arises.

36. The plaint in such suits shall be exempt from payment of Court fees, if the claim be for recovery of arrears which accrued due within 12 months next preceding its institution; if otherwise, the regular Court fee which would have been levied, had the claim been instituted as a regular suit in a competent Court shall be levied on the plaint.

Plaint where exempt from court-fees.

37. Any agent or Vicharippukaren of a Jenmi empowered in his behalf by a written authority under the hand of the Jenmi shall, for the purpose of summary suit or application under this Regulation be deemed to be a recognised agent of the Jenmi within the meaning of the Code of Civil Procedure notwithstanding that the Jenmi may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending or in which the application is made.

Agent of Jenmi.

38. If in the decision of a suit cognizable summarily by a Munsiff of a Zillah Judge under S. 33, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immovable property or

Powers of Court to decide question of title to immovable property or status.

the status of either of them or of those under whom they claim, which, if it had been the immediate subject matter of the claim, would not be cognizable by the Munsiff or the Zillah Judge under the procedure applicable to non-appealable cases, it shall be competent to the District Munsiff or the Zillah Judge, as the case may be, to decide such question of title to immoveable property or status, so far as it may be necessary to do for the determination of the suit; but such decision shall not be conclusive evidence of such title or status in any other action between the same parties or their representatives.

Procedure where Kudiyan admits the money due but pleads title of third person.

39. (1) When a Kudiyan-Defendant admits that money is due from him on account of Michavarom or renewal fees or customary dues but pleads that is due not to the plaintiff, but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea, unless the Defendant pays into Court the amount so admitted to be due.

(2) When such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months of the notice institutes a regular suit against the Plaintiff and therein obtains an order restraining payment of the money, it shall be paid over to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff the money paid to him under clause (3) of this section.

Decision of Munsiffs and Zillah Judges to be final.

40. The decision of Munsiffs and Zillah Judges passed in summary suits under this Part shall be final, but shall be subject to revision by the High Court in the manner provided for by S. 568 of the Civil Procedure Regulation (II of 1065).

Provided that no judgment, decree or order, in supersession of the decision or order of the subordinate court, shall be

passed by the High Court without giving the parties an opportunity of stating their case either in person or by vakils.

Power of High Court to make rules.

41. The High Court may, from time to time, make rules consistent with this Regulation for regulating the practice and procedure of Courts acting under this Regulation. The rules so made shall be published in the Gazette.

Saving of Kanapattoms executed since 25th Karkadakom 1042

42. Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any Kanapattoms executed since the twenty-fifth day of Karkadakom 1042, which expressly provide for redemption.

Terminable nature of tenancy to be determined from terms of contract.

43. In contracts relating to Jenmom lands entered into for the first time after this Regulation comes into force, the question whether the tenancy is terminable or otherwise shall be determined according to the intention of the parties as gathered from the terms of the contract.

Saving of rights of Kudiyan of more than fifty year's standing.

44. Notwithstanding anything contained in the foregoing, the provisons of this Regulation shall not apply to any Kudiyan, who or whose predecessor in interest, has held his holding for more than fifty years preceding the date of this Regulation, without paying Michavarom and other dues or without taking any renewal within the said period of fifty years.

The provisions of this Regulation shall not apply to any right declared, established or already acquired by Jenmis or Kudiyans at the date this Regulation comes into force.

Explanation.—If any time for redemption has been specially provided for, the fifty years shall be calculated from the date on which the stipulated time expires.

REGULATION I of 1088.

A Regulation relating to marriage, succession and family management of the Nairs, *passed by His Highness the Maha Raja of Travancore, on the 26th October*, 1912 *corresponding to the* **10***th Thulam* 1088, *under Section* 13 *of Regulation V of* 1073.

Preamble.

Whereas it is expedient to define and amend the law of marriage, succession and family management of the Nairs; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title & application.

1. This Regulation may be called "The Travancore Nair Regulation, 1088."

It shall apply to all Nairs domiciled in Travancore, and to such other non-Nairs as have or shall have marital relation with Nair females.

Definitions.

2. In this Regulation, unless there is something repugnant in the subject or context,

"Nair".

"Nair" includes Kiriyam, Illam, Swaroopam, Padamangalam, and others known or recognised as such :

"Marumakkathayam."

"Marumakkathayam" means the system of inheritance in which descent is traced in the female line :

"Thavazhee of a female."

"Thavazhee of a female" means a group of persons consisting of that female and he

issue how-low-soever in the female line, or such of that group as are alive :

"Thavazhee of a male." "Thavazhee of a male" means the thavazhee of his mother :

"Collateral Thavazhees" "Collateral Thavazhees" are thavazhees of females who, though descended from a common ancestress, do not stand in the direct line of ascent or descent from one another :

"Tarwad". "Tarwad" means and includes all the members of a joint family, with community of property, governed by the Marumakkathayam law of inheritance :

"Karanavan". "Karanavan" means the senior male member of the tarwad in whom the headship of the tarwad, the right of management of its affairs and of the possession of the properties thereof, are vested in law, and, in the absence of such male member, the senior female member :

"Anandaravars" or "Seshakars". "Anandaravars" or "Seshakars" means all other members of a tarwad including females senior to the Karanavan :

"Senior Anandaravan" or "Senior Seshakaran." "Senior Anandaravan" or "Senior Seshakaran" means the major male Anandaravan next in age to the Karanavan, and, in the absence of such Anandaravan, the senior major female among the Anandaravars :

"Minor". "Minor" means a pereon who has not completed eighteen years of age.

PART II.

MARRIAGE AND ITS DISSOLUTION.

Conjugal unions of Nair females to be valid marriages. 3. The conjugal union of a Nair female, subject to the restrictions of consanguinity and affinity, with—

(i) a Nair male, or

(ii) any male, other than a Nair, with whom conjugal union is permitted according to recognised social custom and usage, openly solemnised by the presentation of cloth to the female by the male, whether so solemnised before the date on which this Regulation comes into force and subsisting on such date, or so solemnised after this Regulation comes into force, shall be deemed to be a valid marriage for all legal purposes.

Provided that, in conjugal unions so solemnised after the date on which this Regulation comes into force, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age, such conjugal union shall not be deemed to be a valid marriage, unless it takes place with the consent of his or her legal guardian.

Illustrations.

(a) C, a male, commits adultery with B who has married A, or entices away B who, he knows, has married A. C is liable to punishment under Section 500 or 501, Travancore Penal Code.

(b) C, a male, marries B who has married A, during the continuance of A's marriage. Such marriage being void under Section 9, B and C are liable to punishment for bigamy under Section 497, Travancore Penal Code, and abetment thereof, respectively.

(c) A, a male, having sufficient means neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter XXXV, Criminal Procedure Code.

(d) B, a female, who has married A, refuses to co-habit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights.

Dissolution of marriage.

4. Such marriage may be dissolved only in one of the following ways, that is to say,

(i) by the death of either party, or

(ii) by mutual consent evidenced by a registered document, or

(iii) by a formal order of dissolution as hereinafter provided.

Petition for dissolution of marriage.

5. A husband or wife may present a petition for dissolution of the marriage, under Section 4, Clause (iii), in the Court of the District Munsiff within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, and, when the petitioner is the husband, he shall, in all cases, offer in the petition reasonable compensation to the respondent except where such respondent has renounced Hinduism.

Reasonable compensation how determined.

6. What is reasonable compensation shall, in case of dispute, be determined by the Court after an enquiry into the position, means, and circumstances of the parties, but without going into the grounds of the proposed dissolution; and it shall, in no case, exceed two thousand rupees.

Notice to be given to respondent.

7. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

Order of dissolution when and how passed.

8. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the Court shall, after determining the amount of compensation, declare in writing the marriage dissolved. The dissolution shall take effect from the date of the order declaring it.

Decree awarding compensation executable and appealable

So far as it decrees payment of compensation, such order shall be executable and appealable as a decree under the Code of Civil Procedure, on payment of court fees on the amount adjudged or claimed, as the case may be.

Subsequent marriage of a female during the continuance of a prior marriage void.

9. A subsequent marriage of a female during the continuance of a prior marriage is void.

PART III.

MAINTENANCE AND GUARDIANSHIP.

Maintenance of wife and children.

10. The wife and minor children shall be entitled to be maintained by the husband or father, as the case may be.

Provided that the wife shall not be entitled to maintenance if she lives in adultery, or refuses to live with the husband without just cause, or has renounced Hinduism.

Nothing herein contained shall affect the rights of the wife or widow and children to be maintained by their own tarwad.

Husband or father when guardian.

11. The husband shall be the legal guardian of his minor wife, and the father the legal guardian of his minor children, if they are maintained by him and live with him or under his protection, but not in their tarwad.

Provided that such guardianship shall not extend to the right and interest of his wife or children in any property to which they may be entitled other than that given by him to such wife or children.

PART IV.

INTESTATE SUCCESSION.

Wife and children entitled to a half share in self-acquired or separate property.

12. On the death of a Nair male, leaving him surviving a widow or children, or both, she or they shall, if he has undivided Marumakkathayam heirs, be entitled to a half share of his self-acquired or separate property left undisposed of at his death, and, if there are no such heirs, such widow or children or both shall be entitled to the whole of such property.

Possession of a Nair's property on his death.

13. On the death of a Nair male leaving him surviving a widow or children or both and undivided Marumakkathayam heirs, the senior male member or, in the absence of a male member, the senior female member among such heirs, shall have the

possession of such property as is referred to in Section 12, until a division is effected.

Devolution of self acquired property of a Nair male

14. On the death of a Nair male, if he has left him surviving his widow or children, or both, one half, or, if he has left neither widow nor children, the whole of his self-acquired or separate property, shall devolve on his mother's thavazhee, and, in the absence of members in such thavazhee, on the thavazhee of his grandmother, and so on in order, on the thavazhees of his female ascendants, the nearer excluding the more remote, provided that he is not divided from such thavazhee.

Devolution of self acquired property of a Nair female.

15. On the death of a Nair female, her self-acquired or separate property shall devolve on her own thavazhee, and, in the absence of members in such thavazhee, on the thavazhee of her mother, and so on in order, on the thavazhees of her female ascendants, the nearer excluding the more remote; and, on failure of all heirs in the descending or ascending female line, such property shall devolve on her husband, if he is a Nair.

Possession of property inherited under Sections 14 and 15.

16. The senior male member, or, in the absence of a male member, the senior female member, shall have the right to the possession of the properties inherited by thavazhees under Sections 14 and 15.

Division between children to be *per capita*.

17. Property obtained from the husband or father by the wife or widow and child or children by gift or inheritance, shall, unless in the case of gift a contrary intention appears from the instrument of gift, belong to the wife or widow and each of the children in equal shares with right to individual partition.

PART V.

TESTAMENTARY SUCCESSION.

Extent of testamentary power.

18. A Nair may dispose of, by will, the whole of his (or her) self-acquired or separate property.

Section 6 of Regulation VI of 1074 is hereby repealed so far as it relates to the Nairs.

PART VI.

DUTIES AND POWERS OF KARNAVANS AND ANANDARAVARS.

Written consent of the major members necessary for sale, &c.

19. Except with the written consent of all the major members of a tarwad, no Karnavan or other managing member shall sell tarwad property, or lease it for a period of more than twelve years, or mortgage it with possession for a period of more than twelve years.

Mortgage with possession for 12 years or less to be for tarwad necessity and with the consent of the major members.

20. No mortgage with possession of tarwad property for a period of twelve years or less, shall be valid, unless it is executed for tarwad necessity, and with the consent of all the major members of the tarwad.

Such necessity or consent may be presumed to exist, if the transaction has the written consent of the senior Anandaravan of the Karnavan's thavazhee, and of every thavazhee collateral to the same, if any.

Debt to be binding, should be for tarwad necessity.

21. No debt contracted by the Karnavan or other managing member shall bind the tarwad, unless it be for tarwad necessity.

Surrender of right of management allowed.

22. Any member of a tarwad shall be at liberty to give up the right of management as Karnavan, by a unilateral surrender, evidenced by a registered instrument, after such management becomes vested in him by law.

Delegation of powers by Karnavan how to be done.

23. No Karnavan shall delegate his powers unless it be under a registered instrument.

Presumption as to tarwad necessity.

24. Where a Karnavan creates a mortgage without any term, or a lease for a period of twelve years or less without any premium therefor, in respect of tarwad property, or incurs a debt,

alleging the existence of family necessity such necessity shall, as between the mortgagee, lessee or creditor on the one part and the members of the tarwad who have not assented to the mortgage, lease or debt on the other part, be presumed to have existed, if the mortgagee, lessee or creditor, after using reasonable care to ascertain the existence of such necessity, has acted in good faith.

What decree shall bind the tarwad.

25. No decree shall bind a tarwad, unless it be obtained in a suit against the Karnavan as such and the senior Anandaravan of his thavazhee, and of every thavazhee collateral to the same, if any.

PART VII.

SUPPLEMENTAL PROVISIONS.

Marriage dissolved before this Regulation comes into force not affected by it.

26. Nothing in this Regulation shall,—

(1) Confer any rights on the parties to, or offspring of, a marriage dissolved before it comes into force ; or.

(2) Affect the existing rules of Marumakkathayam law, custom or usage, except to the extent hereinbefore expressly provided for.

SIGN MANUAL.

REGULATION XIII OF 1095.

THE COCHIN NAIR REGULATION.

Passed by His Highness the Raja on the 23rd day of Edavam 1095 *corresponding to the 5th day of June* 1920.

Preamble.

Whereas it is expedient to define, regulate, and amend the law of marriage, inheritance, succession, family management, partition and adoption of the Nairs, it is hereby enacted as follows.

CHAPTER I.

Preliminary.

Short title and application.

1. This Regulation may be called the "Cochin Nair Regulation". It shall apply to all Nairs domiciled in Cochin, and to such Nairs not so domiciled and to such non-Nairs, whether or not so domiciled, as have, or shall have, marital relation with Nair females domiciled in Cochin.

It shall come into force at once.

Definitions.

2. In this Regulation unless there is something repugnant in the subject of context :—

Marumakkathayam.

"Marumukkathayam" means the system of inheritance in which descent is traced in the female line.

Tarwad.

"Tarwad" means and includes all the members of a joint family with community of property governed by the Marumakkathayam law of inheritance.

Thavazhi of female.

"Thavazhi of a female" means a group of persons consisting of that female and her descendants in the female line.

Thavazhi of male.

"Thavazhi of a male" means the thavazhi of his mother.

Collateral thavazhies.

"Collateral thavazhies" are thavazhies of females who, though descended from a common ancestress, do not stand in the direct line of ascent or decent from one another.

Karnavan.

"Karnavan" means the senior major male member of a tarwad, and in the absence of such male member, the senior major female member thereof, unless there is a family usage by which the senior major female member is recognised as karnavan.

Anandaravans.

"Anandaravans" means all members of a tarwad other than the karnavan.

" Senior anandaravan " means the major male anandaravan next in age to the karnavan, and in the absence of such anandaravan, the senior major female among the anandaravans, and where, by family usage, the senior major female member is the karnavan, 'senior anandaravan' means the major female member next in age to the karnavan, and in the absence of major female members, the senior major male among the anandaravans.

Senior anandaravan.

" Minor " means a person who has not completed 18 years of age.

Minor.

CHAPTER II.

Marriage and its dissolution.

3. Subject to the restrictions of consanguinity and affinity recognised by the community, the conjugal union of a Nair female with—

Conjugal union of Nairs to be valid marriages.

(a) a Nair male, or

(b) any male, other than a Nair, with whom conjugal union is permitted according to social custom and usage,

openly solemnised by the presentation of cloth to the female by the male, or in any other customary form before the date on which this Regulation comes into force and subsisting on such date, or so solemnised by the presentation of cloth after this Regulation comes into force, shall be deemed to be a legal marriage. Notice of the marriage shall be given by such person and to such authority and in such form and within such time as the Government may prescribe. Failure to give the prescribed notice shall be punishable with fine which may extend to two hundred rupees.

Provided that no conjugal union between minors or between a major and a minor so solemnised after the date on which this Regulation comes into force shall be deemed to be legal unless it takes place with the consent of the guardian or guardians of such minor or minors.

Proviso.

4. The marriage of a male during the continuance of a prior marriage and performed after the coming into force of this Regulation shall be void.

Subsequent marriage of a male during the continuance of prior marriage void.

A polyandrous marriage whether performed before or after this Regulation shall be void.

Polyandrous marriage whenever performed is void.

No one having a personal law of his own allowing polygamy shall marry a Nair female while already married to a caste wife or marry a caste wife, while having a Nair wife already.

Prohibition of polygamy even in case of those having a personal law allowing it.

Illustrations.

(a) C, a male, commits adultery with B who has married A or entices away B who, he knows, has married A. C is liable to punishment under S. 477 or 478 of the Cochin Penal Code.

(b) C, a male, marries B who has married A, during the continuance of A's marriage. Such marriage being void under this section, B and C are liable to punishment for bigamy under S. 474 of the Cochin Penal Code, and abetment thereof respectively.

5. A marriage will be dissolved by the death of either party, or by either party renouncing Hinduism or becoming an outcaste. It may also be dissolved in one of the following ways, and those only, that is to say—

Dissolution of marriage.

(a) by mutual consent evidenced by a registered document,

(b) by a formal order of dissolution as hereinafter provided.

6. A husband or wife may present a petition for dissolution of the marriage in the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the marriage was performed or the respondent resides, or carries on business, or personally works for gain; and, when the petitioner is the husband, he shall, in all cases, offer in the petition and be liable to pay reasonable compensation to the respondent.

Petition for dissolution of marriage.

Reasonable compensation how determined.

7. What is reasonable compensation shall, in case of dispute, be determined by the court after an enquiry into the position and means of the parties but without going into the grounds of the proposed dissolution; and it shall, in no case, exceed Rs. 3,000.

Notice to be given to respondent.

8. A copy of such petition as aforesaid shall be served by the court on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

Order of dissolution when and how passed.

9. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the meantime, the court shall declare in writing the marriage dissolved, and then proceed to determine and decree the amount of compensation. The dissolution shall take effect from the date of the order declaring it.

Decree awarding compensation executable and appealable.

The order decreeing compensation shall be tantamount to a decree and shall, be executable as such, and shall, subject to the payment of court fee on the amount in dispute, be appealable under the Code of Civil Procedure.

Restitution of conjugal rights.

10. No court shall entertain a suit for restitution of of conjugal rights or for judicial separation between parties marrying under this Regulation.

CHAPTER III.

Maintenance and Guardianship.

Maintenance of wife and children.

11. The wife and minor children as also unmarried major daughters shall be entitled to be maintained by the husband or father, as the case may be.

They shall, at the same time, not forfeit their rights to be maintained by their tarwad.

Provided that the wife shall not be entitled to maintenance if she refuses to live with the husband without just cause, or has renounced Hinduism, or has become an outcaste.

Such maintenance shall be awarded by courts with reference to the position and means of the person against whom the maintenance is claimed, and with due regard to the reasonable wants of the persons claiming maintenance.

Husband or father when guardian.

12. The husband shall be the legal guardian of his minor wife and the father the legal guardian of his minor children in respect of their person and property.

Provided that such guardianship shall not extend to the right and interest of his wife or children in any property to which they may be entitled other than that given by him to such wife or children.

13. Where the wife has minor children by a former husband, deceased or divorced, she shall be the legal guardian in respect of their person as also of the separate properties appertaining to them.

CHAPTER IV.

Inheritance and Intestate succession

Wife and children entitled to a half share in self-acquired and separate property.

14. On the death of a Nair male, leaving him surviving a widow or children or both, she or they shall, if he has undivided marumakkathayam heirs, be entitled to one half share of his self-acquired and separate property left undisposed of at his death, and if there are no such heirs, such widow or children or both shall be entitled to the whole of such property.

Devolution of a non-Nair husband's self-acquired and separate property.

15. On the death of a non-Nair male, leaving him surviving a Nair widow or children or both, she or they shall, if he has undivided heirs according to the law by which he is governed, be entitled to one half share of his self-acquired and separate property left undisposed of at his death, and if there are no such undivided heirs, such widow or children or both shall be entitled to the whole of such property.

Devolution of a Nair husband's self-acquisition.

16. On the death of a Nair male, if he has left him surviving a widow or children or both, as also undivided marumakkathayam heirs, the remaining half of his self-acquired and separate property shall devolve on his own thavazhi, failing which, on the thavazhi of his grandmother, and so on in order, on the thavazhies of his female ascendants, the nearer excluding the more remote.

Possession of self-acquired property left undisposed of on death.

17. The self-acquired and separate property left undisposed of by a Nair male at his death leaving him surviving a widow or children or both, as also undivided marumakkathayam heirs, shall be in the possession of the widow, or, in her absence of the senior major male, or, in the absence of any such, of the senior major female member among such children, and in the absence of any such, of the legal guardian of the minor children until a division is effected.

Devolution of a Nair male's self acquisitions when he leaves no wife and children.

18. On the death of a Nair male, if he has left neither widow nor children, the whole of his self-acquired and separate property left undisposed of, shall devolve on his own thavazhi, and, in the absence of members in such thavazhi on the thavazhi of his grandmother, and so on in order, on the thavazhies of his female ascendants, the nearer and the undivided excluding the more remote and the divided.

Devolution of a Nair woman's self-acquisition.

19. On the death of a Nair female, her separate and self-acquired property shall devolve on her own thavazhi. In the absence of any member of such thavazhi, one half of such property shall devolve on her husband, and the other half on her collateral heirs, the nearer and the undivided excluding the more remote and the divided. In the absence of any collateral heirs, the whole of such property shall devolve on her husband, and in the absence of the husband, it shall devolve on the collateral heirs, the nearer and the undivided excluding the more remote and the divided.

CHAPTER V.

Testamentary Succession.

Extent of testamentary power.

20. A Nair may dispose of by will, in writing, the whole of his, or her, self-acquired and separate property, and may appoint an executor or executors to administer the will.

Possession of the executor appointed by the will.

21. When an executor is appointed by the will, such executor, on accepting the nomination, shall, by virtue of his office, come into immediate possession of all properties comprised in the will, and shall administer the will as directed by the testator.

Possession where no such appointment is made or where he does not accept the position.

22. If the executor appointed by the will refuses to accept the office, or if no such executor is appointed by the will, the possession of the property comprised in the will shall pass, on the death of the testator, to the widow, and in her absence, to the senior male, and in the absence of such to the senior female, among his children who shall administer the will.

CHAPTER VI.

The tarwad and its management.

All members of the tarwad are co-proprietors and the karnavan manager and guardian of minors.

23. Every member of a tarwad has proprietory interest in its properties. The karnavan shall have the right of management and of possession, on behalf of the tarwad, of such properties, as also the guardianship of minors generally, subject to the provisions of S. 12 and 13.

Delegation of powers by karnavan.

24. No karnavan shall delegate his powers to any one.

Karnavan to keep accounts of management.

25. The karnavan or the manager for the time being, of a tarwad shall keep a true and correct account of the income and expenditure of the tarwad. The original or an attested copy of the account of each

year shall be available for the inspection in the tarwad house by the major anandaravans, twice a year, on or before the 30th of Chingam and Kumbham respectively.

Karnavan to maintain inventory of all moveables and immoveables.

25. The karnavan or the manager for the time being shall maintain a true and correct inventory of all moveables and immoveables in a tarwad, and it shall be open to inspection by the anandaravans thereof once a year on joint notice of one month given previously, by a majority of the anandaravans.

Emoluments of karnavan.

27. The Karnavan or the manager for the time being, shall be entitled at the end of the year to appropriate besides his maintenance an amount not exceeding 25 per cent. of the net realised income of the tarwad up to a maximum of Rs. 900. So far as this amount is concerned, it shall be deemed to be his self-acquisition.

Consent of major members necessary to validate alienations of tarwad property.

28. Except with the written consent of all the major members of the tarwad, wherever possible no karnavan or the manager for the time being, shall sell tarwad property, moveable or immoveable, or lease it for a period of more than 6 years or mortgage it with possession or pledge or hypothecate it or give discharges of mortgages with or without possession.

For the purpose of this section, moveables include ornaments, vessels and other valuables, and do not include usufructs and grains realised in the shape of pattom.

Mortgages or alienations to be void unless for tarwad neccssity.

29. Every sale, mortgage, pledge or other alienation of tarwad property shall be void unless it is executed or made for tarwad necessity.

Debt of karnavan not binding on tarwad unless for tarwad necessity.

30. No debt contracted by the karnavan or the manager for the time being, shall bind the tarwad unless it be for tarwad necessity.

Burden of proving tarwad necessity.

31. The burden of proving tarwad necessity shall be on the purchaser, mortgagee, pledgee or other alienee or creditor, as the case may be. But the court may presume such necessity where the transaction is in accordance with the provisions of section 28.

What decrees shall bind the tarwad.

32. No decree shall bind a tarwad unless it be obtained in a suit against the karnavan as such and all the members of the tarwad.

Maintenance of members of the tarwad.

33. Every member of a tarwad is entitled to maintenance proportionate to the income and status of the tarwad. If any such member lives outside the tarwad house, he or she shall still be entitled to such maintenance, provided that such member can show some good ground for so living.

Explanation.—'Maintenance' means and includes food and raiment, expenses of education and of medical treatment and such other expenses of an anandaravan as come under the category of *menchilalvu*.

Right of succession to karnavanship.

34. Except in cases of family usage, every major male member and, in the absence of such, every major female member of a tarwad has a right to succeed to the karnavanship in the order of seniority on the death, retirement, renunciation or removal of the karnavan.

Where there is no major male, or major female member in a tarwad, the principal Civil Court of original jurisdiction, within whose limits the tarwad is situated, shall, on the application of any interested in the tarwad or its members, appoint a manager upon such terms as it deems fit, after giving public notice of the application and hearing all those who are interested in opposing or supporting such application, and the manager so apponited shall be accountable to the court under rules framed for the purpose.

Anandaravan's right to see tarwad property safe.

35. Every member of a tarwad has the right to see that the tarwad estate is properly administered by the karnavan and is duly conserved for

the use of the tarwad and that his or her right to succeed to the karnavanship is in no way impaired.

Right to seek removal of karanavan.

36. Every member of a tarwad has the right to seek the removal of the karnavan by a decree of court, if it can be shown that he is physically, mentally or morally incabable of transacting its affairs, or that he habitually mismanages the concerns of the tarwad or that he is guilty of conduct of a kind tending to defeat the very purpose for which the tarwad exists.

Renunciation of right in tarwad.

37. Any member of a tarwad shall be at liberty to give up his rights in the tarwad and every karnavan his right of management as karnavan after it becomes vested in him, by the execution of a registered deed of renunciation.

Thavazhi management.

38. The provisions of this chapter shall apply to all thavazhies in a tarwad possessing separate thavazhi properties.

CHAPTER VII.

Partition.

No member entitled to divide from his thavazhi.

39. (a) No member of a tarwad shall claim, or be compelled, to divide from any other member or members of his, or her own thavazhi.

(b) No member shall claim, or be compelled, to divide from any other member or members of the thavazhi of any of his, or her, lineal ascendants in the female line during the life time of such ascendant.

Collateral thavazhies entitled to divide from each other.

40. After the death of the lineal ascendant referred to in clause (b) of section 39 or with her consent each collateral thavazhi represented by a majority of the major members thereof, may claim an outright partition of all properties common to all thavazhies over which the tarwad has a power of disposal.

The male children, and the female children without issue of such ascendant, that do not come under any of such thavazhies, may obtain their share and separate.

Share of thavazhies on partition how determined

41. Each of such thavazhies shall be entitled, as a whole, to so much of the common properties as would fall to the shares of the members of that thavazhi if a division *per capita* were made among all the living members of all the thavazhies.

42. The provisions of sections 39, 40 and 41 shall apply to all thavazhies in a tarwad possessing separate thavazhi properties.

Division between wife and children to be *per capita*.

43. Property obtained from the husband, or father, by the wife or widow, and child, or children, by gift, inheritance or bequest, or purchased for their benefit shall, unless, in the case of gift, bequest or purchase, a contrary intention appears from the instrument of gift or will or purchase deed, belong to the wife or widow and each of the children in equal shares they holding it as tenants-in-common with right to individual partition.

CHAPTER VIII.

Impartible tarwads.

Tarwads made impartible.

44. Any tarwad wishing to exclude itself from the operation of the sections as to partition in this Regulation may, within six months from the passing of this Regulation, notify its intention of impartibility, by registering its name as an impartible tarwad in the office of the Diwan Peishkar.

Notice of impartibility.

45. Notice of such intention as specified by section 44 shall be given by not less than two-thirds of the major members of each thavazhi of the tarwad concerned.

Diwan Peishkar to consider the question of impartibility.

46. On receipt of such notice, the Diwan Peishkar shall, if he is satisfied that the said notice is agreed to and signed by the majority as provided for by section 45, register the tarwad as an

impartible tarwad, and, if he is not so satisfied, reject such notice.

Impartible tarwads made partible

47. It shall be competent to a tarwad registered as impartible, to exempt itself from the provisions of this chapter by a further notice, stating its desire to cancel the registration previously made, provided that all such notices shall be agreed to and signed by not less than two-thirds of the major members of each thavazhi of the said tarwad.

Order of Diwan Peishkar cancelling impartibility.

48. On receipt of the notice contemplated in section 47, the Diwan Peishkar shall, if he is satisfied that it is agreed to and signed by the majority mentioned above cancel the registration of impartibility.

Diwan Peishkar to file such notices and maintain tarwad register.

49. The Diwan Peishkar shall keep a register of all such applications and orders as provided for in this chapter, and such register shall be open to the public who shall be allowed copies of such registers.

50. All proceedings taken by the Diwan Peishkar under this Chapter shall be deemed to be judicial proceedings and his order shall be final.

CHAPTER IX.

Adoption.

Adoptions when and how to be made.

51. Where a tarwad consists of only male members, or of only female members, past the period of child-bearing, or of both, the karnavan may, with the consent in writing of all other members of the tarwad, make an adoption for the purpose of perpetuating the family.

Such adoption may be of one or more females with or without males.

52. The adoptees shall have in the adopted family all rights and duties as appertain to the members born therein, and shall be liable to take the customary Theetturam from His Highness after payment of the customary dues, which shall be recovered as arrears of land revenue.

Rights and duties of the adoptees.

CHAPTER X.

Supplemental provisions.

53. Nothing in this Regulation shall—

(a) confer any rights on the parties to, or offspring of, a marriage dissolved before it comes into force; or,

Marriage dissolved before this Regulation comes into force not affected by it.

(b) affect the existing rules of Marumakkathayam law, custom, or usage except to the extent hereinbefore expressly provided for.

54. The provisions of Chapters II, III and IV of this Regulation shall apply also to such non-Nair males as have married, or may marry, Nair females, though they may have a personal law in regard to matters dealt with in those chapters.

Application of chapters II, III and IV to persons subject to personal law marrying or have married Nair females.

In the case of those non-Nair males who have already married Nair females before the passing of this Regulation, both the husband and wife shall have the right to make a declaration before the District Court within whose jurisdiction he or she lives, after giving due notice to the one or the other as the case may be, within 6 months from the date of the coming into operation of this Regulation, that they or either of them wish to be exempted from the provisions of Chapter IV of this Regulation and they shall then be exempt from such provisions. The husband and wife may, at any time, cancel such declaration by means of a

Proviso.

joint verified petition to that effect to be presented to the District Court with in whose jurisdiction either of them lives, but they shall not be permitted to make a second declaration.

SIGN MANUAL.

PROCEEDINGS OF THE COURT OF SUDDER UDALAT.

5th August, 1856.

The Land Tenures of Malabar with the conditions on which they are held and conveyed, as established either by precedent or immemorial usage.

Verumpattom (Simple lease).

This lease runs only for a single year, unless otherwise specified. At the end of the year, the landlord is at liberty either to renew the lease or to let the land to another tenant; but he cannot under any circumstances disturb the tenant in his enjoyment until the year has expired. Where the lease is for a specified period, the tenant cannot be ejected during that period, unless he endeavour to defraud the landlord or allow the rent to fall into arrears. In either of these cases, however, an action of ejectment will lie against the tenant.

Kuzhikanom. (Mortgage of waste land with a view to its being planted on

Where no express period has been stipulated, this lease is considered to run for 12 years, otherwise for such period as may have been agreed upon. At the expiration of either of these periods, the landlord may either renew the lease to the same tenant, paying him the value of the improvements, which may also be invested in a mortgage, or he may satisfy the tenant's claim upon the land for the improvements, and may let the property to a new tenant. Compensation is allowed for buildings and fruit-producing trees and shrubs of every description. In the event of the tenant failing

to reclaim the land, plant trees, and otherwise fulfil the conditions of the deed, he may be dispossessed by the landlord before the expiration of the period specified. The landlord may exercise a similar power in the event of the tenant setting up a fraudulent title to the land.

Kuzhikanapattam. [Mortgage of waste land for improvements, the tenant paying rent.]

Under this tenure the tenant binds himself to pay a stipulated rent, as well as to bring new land under culture. Failure in either of these respects or any attempt to defraud the landlord of his title will render the tenant liable to ejectment. If no period is named in the agreement, the lease will be considered to extend to twelve years.

Kanom Kuzhikanom. (Mortgage of waste land for improvements the landlord receiving some pecuniary consideration.)

A tenant cannot be disturbed under this tenure for 12 years or during the period, if any, stipulated, unless he attempt to set up a claim subversive of the landlord's rights. Possessing a pecuniary interest in the property, he cannot be dispossessed for neglect, to improve it.

Panayom, or Thotu Panayom, (Simple pledge, without possession).

The land is here pledged as security for the re-payment, with interest, of certain sums advanced, but the lender has no right to interfere in the management of the property. In some cases, it is stipulated that, on failure on the part of the borrower to pay the interest, the lender shall be placed in possession of the land. Where such stipulation exists, the lender can sustain an action for possession. In other cases, he must sue for the recovery of the principal and interest of the loan, the land being liable in the event of the money not being paid.

Kanom. (Mortgage with possession, a fee being generally paid.)

If no period be specified, the mortgage is considered to extend to 12 years, and always so where a fee has been paid. The mortgagee has possession, recovering the interest of the money he has advanced for the produce of the land, and paying over the net profits to the landlord. Should he fail in the last respect, the amount is placed to the landlord's credit, when

the mortgage is paid off, allowance being made on the other side for any improvements which the mortgagee may have effected. Failure to pay over the net proceeds regularly to the landlord will not give the latter power to redeem his land before the expiration of the period stipulated or that of 12 years, unless there be an express condition to that effect in the deed. Any attempt, however, on the part of the mortgagee to defraud the landlord and usurp the property will give the latter that power.

Mel-kanom. (Higher mortgage.)

Should the landlord desire to raise a further sum of money on the land and the mortgagee be unwilling to advance it, he may mortgage the property to a third party, who will be entitled to possession, on paying off the sum originally advanced by the first mortgagee. The latter, however, has the option of advancing the required sum, and remaining in possession if he pleases. Where the land has been mortgaged for a particular period, the landlord cannot interfere, until the expiration of such period. Kanom mortgages are generally renewed at the end of the period fixed, the landlord receiving a fee; but there is no obligation on either side to renew them, unless the landlord and mortgagee should be mutually desirous of doing so. Where the mortgagee discovers that the landlord has acted fraudulently, involving the produce of the land, he is entitled to have the deed cancelled.

Koyu Panayam. (Mortgage of the right of cultivation.)

Under this tenure, the mortgagee has only the right to cultivate the land. If no period be specified, the landlord is at liberty to pay off the mortgage whenever he pleases. This tenure prevails in the neighbourhood of Palghat.

Kanom Poramkadam. (Loan advanced on the security of land already held on mortgage.)

This is an expedient for raising the money on land already made over on Kanom. It is quite a separate transaction, sometimes taking place at the time of the mortgage; in which case it is referred to in the Kanom deed; at other times effected long after the mortgagee has come into possession. In the latter case the fact of the mortgage is alluded to

in this deed, and the landlord engages to pay off both the mortgage and the loan together. The loan thus made gives the mortgagee an additional lien upon the property as security for the re-payment of the loan. Where the new loan is added to the sum first advanced and a fresh bond is executed, the transaction is treated altogether according to the rules applying to Kanom mortgages.

Otti.
(Usufructuary mortgage, the full value of the land being advanced)

This tenure gives the mortgagee possession and the entire produce of the land, the landlord merely retaining the proprietary title and the power to redeem. Where no period has been stipulated the landlord may pay off the mortgage at any time. The principal alone is re-payable, the mortgagee recovering the interest of his money from the produce of the land. If the landlord be desirous of raising a further sum and the Otti mortgagee refuses to advance it, the money may be received from a third party, and the mortgage transferred to him but the original mortgagee has a right to be first consulted.

Kaivituka Otti.
(Usufructuary mortgage, with relinquishment of the power of transfer.)

The landlord in this case relinquishes the power of transferring the property to a third party and binds himself to borrow any further sum he may require, only from the mortgagee. Should the latter decline to advance the amount, the landlord may pay off the mortgage and re-assign the property to another party.

Ottikkumpuram.
(Where a sum is advanced beyond the Otti amount.)

When the landlord wishes to obtain a further sum, he applies to the Otti mortgagee, and on receiving it executes this deed to him, in which he binds himself to re-pay the amount at the same time that he pays off the mortgage. The mortgagee must have always the option of making such further advance, but if he decline, the landlord may apply to a third party and assign the property to him, the latter paying off the claim of the original mortgagee.

When the landlord requires to borrow a still further sum on the security of land assigned to an Otti mortgagee to whom

he has already executed an Ottikkum-puram deed, he is bound first to apply to such mortgagee, and if the latter should consent to make the required advance, the landlord gives him a Neermuthal document by which he makes over to him all but the right of water. Such further advance is recoverable with the amount of the original mortgage, the Otti claim being in fact merged in the Neermuthal deed. In this case, as in that of Ottikkum-puram transaction, if the mortgagee decline to make the advance, the landlord may obtain it from a third party who satisfies the claim of the original mortgagee and comes into possession. In any of the three cases last mentioned, the landlord is at liberty at any time to pay off the mortgage and redeem his property.

Neermuthal. (Where a further sum is advanced on an Otti mortgage in addition to the Ottikkum-puram.)

This is the last resource, short of selling altogether. In executing this deed, the landlord relinquishes the power to redeem his land, and has nothing left to him out of the nominal right of proprietorship. By going through the form of casting a few drops of water from his hand, he yields up all right of further interference in the land. Nor can he sell his further proprietary title to any one but the mortgagee, as he has already made over to him all the rights and privileges possessed by a proprietor. The three last tenures prevail only in the neighbourhood of Calicút.

Jenmum Panayom. (Mortgage of the proprietary right.)

The purchaser in coming into possession is bound by all the obligations which attached to the proprietor. He cannot disturb those who may be holding the property or any portion of it on Kanom mortgage, but merely receive the surplus rent produce in place of the former landlord. On the other hand, he comes into all the rights and privileges of the former landlord and may pay off Otti mortgages and sell or transfer the property as he pleases.

Jenmum or Attipper. (Outright sale of the proprietary right.)

This tenure approximates closely to that of Otti, the mortgagee being in possession and enjoying the whole produce. The peculiarity of this transaction is that the sum advanced, which is always the full marketable value of the land for the time being, is not mentioned in the deed, and the landlord in redeeming the property does not re-pay the amount originally advanced, but the actual value of it in the market at the time of the redemption. In other respects, the same rules that apply to Otti mortgages are applicable to these also. Deeds of this kind are in use only at Palghat and Temmalapuram.

Peruvartham. (Usufructuary mortgage, the land being redeemable at its value in the market at the time of redemption.)

In this case the land is made over in perpetuity to the grantee, either unconditionally as a mark of favour, or on condition of certain services being performed. The terms Atima and Kutima, mean a slave or one subject to the landlord, the grant generally being made to such persons. A nominal fee of about two fanams a year is payable to the landlord to show that he still retains the proprietary title. Land bestowed as a mark of favour can never be resumed, but where it is granted as remuneration for certain services to be performed, the non-performance of such services, involving the necessity of having them discharged by others, will give the landlord power to recover the land. The non-payment of the annual fee will form no ground for ousting the grantee, but it will be recoverable by action. The hereditary property of native princes cannot be enforced on this tenure, the ruling prince having only the right of enjoyment during life, without power to alienate.

Adima or Kutima Jenmam. (A permanent but inalienable right granted for favour or for performance of certain services.)

It was customary for princes, when conferring a title on any person, to grant him at the same time sufficient land to enable him to maintain the dignity of his position. Grants under this tenure were also bestowed upon persons for special services rendered, or for the future

Anubham or Anubhavam. (Relinquishment land for enjoyment by the tenant perpetuity.)

performance of certain services. The tenant cannot be ejected, except where there are conditions imposed and he fails to fulfil them ; but on the other hand, he and his heirs have only the right of enjoyment and cannot alienate their title. A trifling annual fee is generally paid to the landlord to show that he has not surrendered the proprietary right.

Karankari or Jamma Koyu. (Sale of transfer in perpetuity of the right of cultivation.)

In this case the land is made over for permanent cultivation by the tenant in return for services rendered. Where the proprietary title is vested in a pagoda, the grant will be made for future services. In some cases the land is mortgaged on this tenure, the kanom mortgagee paying the surplus rent produce to the landlord, after deducting the interest of the money he has advanced. The tenant has, in North Malabar, only a life-interest in the property which at his death reverts to the landlord. In the south, the land is enjoyed by the tenant and his descendants until there is a failure of heirs, when it reverts to the proprietor. Except where the land is granted for special services, an annual rent is payable under this tenure. The tenant's right is confined to that of cultivation, but it is permanent, and he cannot be ousted for arrears of rent, which must be recovered by action, unless there be a specific clause in the deed declaring the deed cancelled, if the rent be allowed to fall into arrears.

Kariama. (Right of perpetual enjoyment.)

Lands made over by the trustees or managers of pagodas to those employed in performing certain services therein, are conferred on this tenure. So long as they fulfil their duties, the tenants are not liable to be ousted ; to maintain an action of ejectment, therefor, it must be shown either that they have neglected their duties which have rendered it necessary to employ other persons to perform them, or that they have endeavoured to set up a proprietary claim in subversion of that of the Pagoda.

Coodcroopad or Nelamuri, (Assignment of rent produce.)

This is an arrangement between a landlord and his creditor, according to which the latter agrees, to receive the rent produce of land leased to a tenant, in lieu of interest in money upon the sum borrowed by the landlord. Should any dispute arise between the landlord and his tenant, and should the latter in consequence, refuse to deliver the rent produce according to the landlord's deed of assignment, the creditor can sustain an action only against the landlord.

The tenant is much in the same position as a Kanom mortgagee, having possession and recovering the interest of his money from the rent produce of the land. Instead, however, of making over the surplus produce to the landlord he places it to his credit in account to be applied to the reduction of the principal. As soon as the principal is in this manner repaid, the mortgagee must restore the land to the proprietor.

Kutti Kanom. (Mortgage of forests, the mortgagee felling the timber for trade and paying a fee on each stump or tree to the landlord.)

This is an arrangement by which the landlord assigns on mortgage a tract of forest land, receiving a stipulated fee for every tree felled by the mortgagee, the entire number of trees to be cut down and the period within which they are to be felled being expressly fixed in the Karar entered into between the parties. The mortgagee usually makes an advance and agrees to pay the balance by instalments. The non-payment of the stipulated instalments does not render the mortgagee liable to dispossession, unless there be a special clause in the agreement to this effect. The instalments may be recovered by action, but the mortgagee remains in possession during the period stipulated.

Sub-mortgage.

Mortgagees may transfer their interest to sub-mortgagees, and the latter come into the enjoyment of the same rights and privileges as the former possessed. A notice should be given to the landlord at the time of the transfer. In an action for the recovery of the property, the landlord must recognise and sue the party in

possession, but is only liable to pay the amount which would have been payable to the original mortgagee.

GLOSSARY OF TERMS.

[**N.** B. G. G. stands for Graem's Glossary, S. P. for Sudder Court Proceedings, Kan—for Kanarese.]

Malabar and South Canara.

Achan : lit Father. 1. the title of males in the royal family of Palghat. 2. the minister of Calicut Raja, as Mangat Achan. 3. the minister of the Cochin Raja as Paliat Achan. 4. The minister of the second raja of Calicut, Cheruli Achan.

Achandrarkam : lit A: so long as; Chandra : Moon; Arkam : Sun. Perpetual tenure.

Acharam : Established custom and is opposed to anacharam.

Adavu. Simple mortgage, (Kan).

Adigari : Head of an Amshom.

Adima : (slave) or *kudima* (kudian : tiller of the soil) Grant to a dependant, so called when the grantee is a man of low caste, for favour or for performance of services generally reserving a nominal rent, for life or to the grantee and his heirs; inalienable without consent and on failure of heirs reverts to the grantor; not resumable for non-payment of rent but resumable on non-performance of service. According to Graeme not resumable under any other circumstances.

Adimayavana : Adima : Servant; Yavana : enjoyment. allowance for service past or future; may be of land or of allowance; permanent. Grant to a vassal not being a slave. Irredeemable to long as it remains in the grantee's family.

Adiyan : in North Malabar, slave; in South Malabar vassal.

Adukkuvathoo : renewal fees calculated at a certain percentage of the kanom.

Akama : Customary perquisites payable by the tenant to the Antharjenam or the Chief Lady of the Nambudiri jenmi.

Alaunbhavom : Anubhavom for life of the grantee.

Alavu Paimash : Survey accounts prepared at the instance of Mr. Warden in 1805-1806 ; also known as Jenma Paimash.

Alikulikanom : Expenses of improvement.

Alisilavu : Expenses of preparing garden land for cultivation,

Aliyasantana : *Lit.* Inheritance in the line of nephews.

Ambalavasi : temple servant class,

Amshom : Village.

Amshapatram : } Partition deed.
or Pakuti Ola : }

Anacharam : Irregular practices of Nambudiris.

Anandaravakasom : *Lit*, Next heirship.

Anandiravan : Junior member of Malabar tarwad.

Andu or Kollam : Malabar Year ; the kollam Era commenced on 25th August 825 A. D.

Ann Vazhi : Male line.

Antharjanam : Nambudiri ladies.

Anubhavom : (Enjoyment) Grants by Rajas or jenmis for services performed or to be performed or for maintenance of the dignity of the grantee, sometimes receiving a nominal annual fee ; inalienable. May be of allowance or land. In the latter case, land is held permanently. Reverts on failure of heirs to grantor on succession of heirs Jenmi entitled to Purushantanom (G. G.) ; cannot be resumed unless condition imposed S. P.

Aradiyantharam or Aravakasom : Customary perquisites payable to Brahmin jenmi on occasions of the six important ceremonies.

Arijenm : (Ari : rice) a perpetual tenure where the tenant is bound to supply a certain quantity of rice for daily offering at the temple and is allowed to take the offered rice.

Artha mulgeni-mulgeni for a premium.

Arukalcha : Same as Aradiyantaram.

Attaladakom : *Lit* attal-extinction ; Adakkam : taking ; Remote heir in the absence of the tarwad.

Attiper : Absolute transfer.

Attipettola : Sale deed.

Attuveppu : Plantation bordering on river etc.

Avakasom : Right.

Badi : Gift made on marriage occasion to the bride-groom, no reversionary right reserved to the donor (see I. L. R. 6 M. 319).

Bail : Low lying land yeilding 2 or 3 crops [Kan].

Baluttar : Payments made by way of gift to temples etc. for certain purposes (Kan).

Bane : Kumki (Kan.)

Baniar : Waste land (Kan).

Basti : Jain temple (Kan.)

Bettu : One cropped land (Kan).

Bhogyadi : Usufructuary mortgage (Kan.)

Bhuta : Devil, devil shrines being called Bhuta Sthana. (Kan).

Bhutal Pandyana Kattukattalai : The enactments of Bhutala Pandya introducing Aliysantana rules into S. Kanara.

Bitti : Gratuitous labour by tenants (Kan).

Chalgeni : Name for yearly lease in S. Kanara.

Chalian : A person of the weaver caste ; follows marumakkathayam.

Chamayom : Expenses of building and other fixtures.

Kil chamayam—expenses of cultivation.

Pura chamayam—expenses of building.

Cherulabhom : Cheru : soil ; Labhom : Profiit ; cultivation share of the profits of cultivation.

Choondipanayom : Choondi : return ; simple mortgage sometimes with provision to take possession on default.

Chucker : Extra assessment imposed in 1720 in lieu of interest and an addition made in 1758 for Mahratta chowth (Kan)

Chungantam : An assignment of land for payment of protection fee to the superior.

Collam : Malabar year.

Coodcropad : See Nilamuri.

Coodimanir : See Kudimanir.

Coodiyirippu : Lease for building purposes.

Coorambiyattiri : Title of Calicut Zamorin's family.

Coottichom : A rent free tenure to a Nayar on military service.

Coorvuzhicha: Kur: above ; Vazhuka reign : rulership. Share of Government entrusted to a subordinate prince; Guddi or musnad.

Cooz-kur : Lit coozi : Pit ; Kur : improvement such as fruit trees.

Cowle : Agreement under which Government introduced cultivators into waste lands.

Desam : A village.

Desakoyma : (Desa : province, Koyma : Rulership) ; which denoted 5 things (1) Desam, *i.e.*, the jenmiship of the Desa, (2) Desadhi pathyom, *i. e.*, supreme authority over Desam, (3) Ambalappadi a place of precedence in public place, (4) Uraima, *i. e.*, official authority, (5) Melkoymaie, Superintendence over temples.

Devaswom : (Deva : God ; swom : property) Temple.

Diksha : Ceremonies attending the mourning for a deceased person.

Dravyom : Otti amount.

Durmatichitta : Accounts prepared in 1801 of wargs (Kan).

Edam : The house of a member of the Palghat Royal family.

Edanotti : Security where title alone is pledged.

Edurmudi : Counterpart of a lease (Kan).

Edurmudi Krayachit : Sale deed with a counter agreement, may be a sale or mortgage (Kan).

Ejaman : Canarese equivalent of Karnavan.

Elayad : An inferior class of Brahmins who officiate as priests for Sudras.

Embrandiris ; Brahmins of Canara in Malabar.

Enak : Notice announcing transfer of interest by mortgagor or mortgagee.

Enipadi; *See* Koyilmeni.

Ezhuvan : As Tiyans are called in Palghat and Valluvanad, follow Makkathayam.

Geni : Rent (Kan).

Geni warg or Sirkar Geni warg : Escheated or forfeited warg given originally on lease--now on the same footing as other wargs (Kan).

Ghar Terige : House tax--tenure conferring proprietary rights in house-sites in towns (Kan.)

Gramam : Village ; applied to Brahmin village or Agraharom.

Gutiu : Principal house or houses in a Seeme or chieftain's province (Kan).

Hakkal : Tax for dry cultivation on Government waste. (Kan).

Hennumula : Property of females (Kan). prevalent among Moplas—Aliyasantana—*see* Stri Sothu.

Hosagame : li. New cultivation. Lands granted on Darkhast after British conquest (Kan.)

Hauva : Customary fee payable by the tenant to the senior anandravans of a Nambudri jenmi.

Idarwar : Usufructutry mortgage (Kan).

Illoms or Manas of Nambudiris corresponding to Tarwads among Nayars.

Ilukku ; Private property of a Raja. He relinquishes his management in favour of his nephew where he gives up his official dignity for a higher step.

Iluvan : *See* Ezhavan.

Inakkumuri : Same as Enak.

Jenmom ; Freehold.

Jenmabhogam ; Jenmi's share, applied to payment to Government as jenmi's share when the Government is Jenmi.

Jenmakaran ; Owner in fee.

Jenmakkozhu ; Permanent lease ; (G. G.) Right confined to cultivation in North Malabar for life. In South Malabar enjoyable by the tenant and his descendants. On failure of heirs reverts to landlord (S. A. 495 of 1869) ; where grantor pagoda made for future services (S. P.)

Jenmakudima ; Pledge of jenm. Irredeemable tenure and after this the jenmi has only nominal ownership. He cannot sell to any other but the mortgagee.

Jenma Panayom : Mortgage of land with no right of redemption ; possibly as opposed to mortgage of usufruct or panayom.

Jenmi : Landlord or proprietor.

Kadim : Ancient as opposed to Hosagaine wargs (Kan).

Kaichit : Counter part.

Kaivasa Panayam: (Kaivasam: Possession ; Panayam: mortgage) Usufructuary mortgage.

Kambharti : Wargs not paying full assessment (Kan).

Kanom : Usual tenure in Malabar enuring in the absence of contract to the contrary for 12 years, interest being set off against rent, balance being payable to jenmi as michavarom.

Kanom purankadom ; Further charge payable with kanom.

Karaima ; Perpetual grant by temple managers for services to be rendered to the temple. Resumable on neglect to perform service or setting up proprietary claim (S. P.)

Karalan : Deputy or agent of the Uralan who manages the temple affairs.

Karanam or Pramanam : Instrument.

Karamkari or jenma Kozhlu : Permanent grant in return for services rendered ; in case of temples for future services. In North Malabar only life interest, elsewhere till failure of heirs.

Karnavan : Eldest male member and the manager of the tarwad.

Karaveppu as opposed to attuveppu : Plantation on elevated plots.

Karipanayom : Ordinary usufructuary mortgage.

Kasi : Marriage gift among Moplas donor reserving a reversionary right on the termination of marriage (Kan). [*See* I. L. R. 6 M. 319.]

Kattakanom or Muppappanam or Talakanam : Simple lease for one year when the tenant advances the rent. May be

even for a longer period with an advance as security not to carry interest. [Cf. 17 I. C. 623.]

Kayam Geni : Permanent lease (Kan).

Kazhaga Kanom or Kazhagacharth : Tenure of Kazhaga or temple servant.

Kiyjenmom : A perpetual grant.

Keikkuli or Shelakkasu : Perquisite payable by a Verumpattom lessee at the renewal.

Keippanom : Property given on marriage among the Mappillas returnable on the termination of the marriage to widow or children if she is dead; to tarwad in the absence of both.

Keividuga Otti : Otti irredeemable except when the ottidar refuses to make further advance.

Kettiadakamkanom : Usufructuary mortgage in which rent is absorbed by interest but with no pre-emption.

Kidakkora : a form of Nayar marriage in Palghat.

Kizhchamayom or Vetluchamayom : Compensation for clearing and levelling land payable to tenants.

Kizkanom : Sub-Kanom.

Kilazikur Jenmom or Kilayi jenmom : Right to lower kinds of produce when the higher belongs to another.

Kol Peimash : Warden's survey by measurement of 1805.

Kollam : *See* Andu.

Kovilagom or Kottaram : Palace or dwelling place of Royal families in Malabar.

Kozhlu Erakompanayom : Same as Kozhlu panayam.

Kozhulabhom : Cultivator's share.

Kozhlupanayom : (Kozhlu : Plough-share, Panayam : mortgage) Usufructuary mortgage redeemable at any time if no term fixed, no right of pre-emption. Prevails in Palghat and North Malabar.

Kozilmeni or Enipadu : Modes of reckoning the produce of cocoanut gardens.

Kraya Mula Sadhana or Krayachit : Sale deed (Kan.)

Kudian : Cultivating tenant.

Kudimanir : Transfer next in order to attiper. Irredeemable tenure reserving a nominal rent. Non-transferable where granted for services to be performed, non-performance of services gives right to resume. Not resumable for non-payment of rent. Stani cannot grant.

Kudima : *See* Adima.

Kudiyankur : Cultivator's share.

Kudiyiruppu : Building lease. May build shops. 2 Logan cxcix.

Kudiyiruttappattu : A document by which the jenmi assigns the rent to a creditor. The creditor's right only against the jenmi.

Kudutale : Entry in Collector's register.

Kumaki : The privilege of taking leaves for manure from adjoining waste land of Government (Kan).

Kulichekom : Land granted to Nayars for military service.

Kurvulcha : *See* Coorvulcha.

Kuttikanom : Assignment of forest land receiving stipulated fee for every tree felled.

Kuzhikur : *See* Coozhikur.

Kanom Kuzhikkanom : Mortgage of waste land for 12 years.

Kumri : Shifting cultivation on forest land by felling trees. (Kan.)

Kuzhikanom : A lease for improving the land; no rent is paid ordinarily.

Kuzhikanapattom : A tenure under which the tenant binds himself to pay stipulated rent as well as bring new land under cultivation, enures for 12 years unless a special term is fixed by contract.

Kuzhikkuryavana : A redeemable tenure. A. S. No. 164 of 1887.

Kaivasam Panayam : Usufructuary mortgage.

Majal : Middling land one crop paddy, second crop dry grains. (Kan.)

Makkathayom : System of inheritance through sons.

Malikana : Allowance paid to deposed chieftains.

Mana : The housetof a Nambuduripad.

Mangalam : Tiya marriage in North Malabar.

Maruppattam : Counter part of lease.

Mattotti : Sub-mortgage also called Kizhkanom.

Marumakkathayom : System of inheritance through nephews and nieces.

Maryada : Usage.

Matham : House of a Chakkiyar.

Mel-anubhavom Panayam : Usufructuary mortgage where interest alone is paid.

Melchilavu : Pocket expenses allowed to junior members.

Melkanom or melcharth : Kanom with direction to redeem a prior kanom.

Melkoyma : Right of superintendence over temples vested in the Sovereign.

Melpattom : Lease of trees with no interest in land; enures for one year.

Michavarom : The residue payable to jenmi after deducting interest from rent.

Misra Vazhi : mixed part : Rule of inheritance among Ezhavas of S. Travancore in respect of self acquisition which is a combination of Makkathayam and Marumakkathayam.

Modams and punom : High lands where paddy only of certain kind can be cultivated.

Mopla : Mahomedans of Malabar and Kanara speaking Malayalam.

Moggu : Payment by wala wargadar. (Kan.)

Mulgeni : Permanent hereditary tenure, lapses on failure of heirs to landlord (Kan.)

Muliwarg : Proprietary right. (Kan)

Mulpatta : Title deed granted by Government. (Kan.)

Munpattom : Simple lease for one year where tenant advances rent.

Mudalsambandham : Property connection as opposed to Pulasambandham or connection for pollution.

Nadagi : Planting lease in the northern part of S. Kanara.

Nalubhayom : 4 kinds of produce, cocoanut, arecanut, pepper and jack.

Nambisan : A class of temple servants.

Nambudiri : The indigenous Malabar Brahmin.

Nelterige : Land tax, a tenure in terms not supposed to convey full proprietary right.

Nerpalisa : Another name for otti (Ner=equal; palisha =interest).

Nettikut : Crest of hill.

Nigdi— fixed (Kan).

Nigudi: tax.

Nilamuri : Also called cooderoopad. Assignment of rent to creditor; no right of recourse against the tenant if the latter does not pay.

Nishudi : Release (Kan) Palnishudi, Partition deed.

Nirumudal : Transfer of all but the jenmi interest; lit. transfer of all but the right of water. Redeemable on refusal to advance further.

Nirozhikka othi Kanom : A mortgage like kanom ; Redeemable *see* 42 M. L. J. 350.

Oliyakanom : Perpetual lease or kanom.

Onakulcha : Perquisite payable by the tenant to the jenmi at the onam.

Onam : A national feast when Parasurama is said to revisit Malabar.

Ooralan : Trustee of temple in Malabar.

Oobhayom : Rice fields.

Ootu Brahmaswom . Endowments to choultries of Ootupura.

Ootu Poora : Choultry.

Oppukanom ; Same as Opputhusi.

Opputhusi ; Fees payable at the renewal; originally expenses of the renewal.

Otti : A mortgage like kanom, with right of pre-emption and pre-mortgage.

Otti kumpuram ; Further advance after Otti payable with the otti amount.

Paimash : Accounts prepared by the Revenue Officials.

Pakuti Ola ; See Amshapatram.

Pagadi ; Perquisites of chieftains and extra assessment imposed in 1711 for the marriage of Basappa Naik (Kan).

Palisa ; Interest.

Palisamadakkam : (Palisa, interest; Madaka, return) another name for otti in Nedunganad and Valluvanad Taluqs. In this the pattam is mentioned unlike otti.

Palpatti : Partition deed (Kan).

Panayom ; Generic term for mortgage.

Panaythukaran ; Mortgagee.

Panayapattam Kulikanom ; Reclamation lease.

Pattars ; Tamil Brahmins of the East coast settled in Malabar; one class known as cholıya or arya Pattars wearing the knot of hair in the front like Nambudiris.

Pattom : Rent.

Pattam ; Lit. gadi corresponds to stanom [Kan.]

Patta ; Extra assessment imposed in 1718 to pay Haider's peiscush [Kan].

Pattakaran ; Simple lessee.

Pattamali or Pattali ; Subordinate officer attached to a temple subject to the Ooralan or his *locum tenans* Karalan: Rent collector.

Patta chit : Lease deed.

Penvazhi Mupper ; The dignity of the senior lady in a Kovilagam.

Penn Vazhi : Female line.

Peruartham : Like otti but redeemable only on payment of market value: only in Palghat and Temmalpuram (S. P.)

Pidika : The house of a Mopla.

Pisharodi : A temple servant class.

Poduval : A temple servant class.

Ponamvaram : Landlord's share in jungle cultivation.

Polichezhuthu : *Lit.* Writing fee. Fee paid to the jenmi at the renewal of the kanom.

Pramanom : *See* Karanom.

Pudamuri : Marriage in North Malabar by giving of cloth by the bridegroom to the bride.

Pulasambandham : Pollution connection.

Pugil Vivaram : Clemenston's Paimash 1833—1843.

Pura : House of a Tiyan.

Purachamayom : *See* Chamayom.

Purankadon : Further charge payable with the kanom amount.

Purappad : Rent.

Purushantarom : (Purusha : person, antaram : change.) Fee due to jenmi on death of kanomdar or the jenmi.

Pushpottu or Pisharom or Varyam : House of an Ambalavasi.

Putravakasom : Gift by father to wife and children.

Rekha or Shist : Standard Revenue imposed by ancient Hindu rulers (Kan).

Sabhayogam : Association of Nambudiri houses (S. A. 738 of 1888 ; S. A. 159 of 1891 ; A. S. 36 of 1900).

Sakshi : Witnessing : an item of fees payable at the renewal of a kanom.

Sambandhom : Generic term for Malabar marriage.

Samudayi : Manager of the Devaswom.

Santati Brahmasvam : Perpetual grant to Brahmin.

Sarasari : Average : term applied to the settlement of 1819 (Kan)

Sarasari chitta : Accounts prepared in 1819 (Kan).

Saswatom : Perpetual lease or mortgage with or without reservation of rent, either in consideration of present money payment or past or future service.

Sarvaswadanom ; A kind of Nambudiri marriage.

Shanabhog : Kurnam (Kan).

Shanil : Extra assessment imposed by Hyder and Tippu (Kan).

Shanti : Temple priest.

Shartha Mulgeni : Mulgeni with a condition. (Kan)

Shilakasu : Same as Keikuli.

Shist or Rekha : Old assessment of Vizianagar and Bednore Rajas. (Kan.)

Smarta Vicharam : Caste inquiry among Nambudiris.

Stanom : Status and attendant property of the senior Rajas.

Stridhanam : Gift among Moplas at the time of marriage [I. L. R. 36 M. 385; (1910) M.W.N. 398 ; S.A. 1810 of 1916.]

Stri Sothu : (Woman's property) property to be held by females only (1910) M. W. N. 693 ; I. L. R. 32 M. 315 ; I. L. R. 43 M. 393.

Swarupam : A ruling dynasty

Talikattukalyanam : Formal marriage ceremonies preliminary to Sambandham.

Tamburatti : The senior lady in a kovilagom.

Tangal : Mopla priest.

Taraga : (Royal grant) Lease or counterpart of a l (I. L. R. 44 M. 344 ; 44 M. 509.)

Tarwad :—A joint undivided marumakkathayom family.

Tavazhi : A branch of the family being descendants of the same mother.

Tir or muri : Transfer of kanom.

Tharao : Fixed assessment of 1819 (Kan.)

Thalapattam : Simple lease for 1 year where tenant advances the rent.

Thodu panayom : Simple mortgage.

Thusipanom : Steel : fee for the writer of the renewal deed.

Thittu : Pollution.

Thittu : A writ from a superior to an inferior *e. g.*, an adima grant.

Ubhayapattam : Lease of rice fields.

Ulpalli : Rice fields also known as ubhayom.

Undarutti Panayam : Unnak: to eat, Aruti: end ; Usufructuary mortgage where the mortgage money is paid out of the usufruct both the principal and the interest.

Uraima : Trusteeship of a temple.

Uralan : (Ur:village, Alen:person.) Trustee of a emple.

Usham Porukka : A form of marriage in North Malabar among Nairs.

Uttara : Free grant of land or assessment to temple, etc. (Kan) *Swasti Uttara* said to be a term used when both land and assessment is granted.

Vaidegeni : term lease (Kan).

Vartane : fixed allowances.

Vagaolkanom : Irredeemable tenure S. A. No. 819 of 1882.

Valarthakadu : Compensation for maintaining spontaneous growth.

Vantige : Contributions to village temple, etc, (Kan.)

Varinadaka : Another word for otti.

Varyom : House of an Ambalavasi.

Verumpattom : (Verum: simple; pattom: rent) Simple lease for one year ; for 12 years in the case of kovilagoms if renewal fee paid ; then same as kuzhikanom. Said to be forfeited on non-payment of rent or denial of title.

Verumkari : Another name for verumpattom.

Verumkozhlu ; Do.

Vettu Chamayom ; Improvements.

Veppu ; Another word for otti in Palghat.

Vidu ; The house of a Nayar,

Vidaram Kairuga ; A form of marriage among Nairs in N. Malabar.

Vilakku : Money paid by the occupants of Devaswam land in the streets of Palghat, held to be quit rent.

Virampatta Kuzhikanam Kudiyiruppu, In Calicut a tenure to which the same incidents attach as to Kuzhikanom.

Vishu ; Malabar New year's day.

Vyavaharamala ; A Sanscrit book on Malabar Law.

Vyavahara Samudram ; Name of a political treatise on Malabar Law,

Warg ; Holding or estate ; not necessarily a compact block (Kan).

Walawarg ; An underwarg, the walawargdar being responsible for payment of assessment to wargdar who is responsible to Government,

Yavana ; Maintenance, Enjoyment *See also* Adimayavana,

Yavika : A redeemable tenure S. A. No. 766 of 1885.

MADRAS ACT No. XIII OF 1920.

The Mulgeni Rent Enhancement Act, 1920.

In view of the hardship to the landlords occasioned by the enhancement of assessment at the recent settlement, the advisability of legislation throwing a share of the liability on the tenant which may be considered proportionate to the benefits enjoyed by him was suggested in *Vidyapurna* v. *Uggannu* I. L. R. 34 M. 231 and the present Act is the result.

The method of apportionment adopted by the Act is to throw the entire increase on the tenant in case of money rents and in the case of rent in kind to distribute it in the proportion the old assessment bears to the new. It is difficult to see the principle underlying the latter distribution. A more equitable method would have been to distribute it in the proporcion of the rent reserved and the income obtainable from the land. The inquiry would have been a little more complicated. Even as it is the ascertainment of the old assessment payable from the portion given on mulgeni must, in good many cases, be fairly hopeless.

The term mulgeni is defined to include sub-mulgeni but not walawarg as that tenure can hardly be called a lease-hold tenure. Sub-mulgeni has been included so as to enable the under-lessor to devolve a portion of his liability on the under-lessee.

The benefit of the apportionment can be obtained only from the year in which application is made but the Act takes away from the tenant the right of suit in respect of such increase after the commencement of the Act. All pending suits are directed to be referred to the Collector for apportionment in accordance with the Act but there seems to be a lacuna in the Act so far as this matter is concerned. Sec. 10 says that any revision of rent shall take effect from the commencement of the Revenue year in which the application is made. Sec. 12 treats the plaint as equivalent to an application. A suit is, except rarely, for past revenue years' payments ; as such the reference to the Collector would not dispose of the plaintiff's claim. What is to become of such claims ? The first part of Sec. 12 can have reference only to *future* suits and cannot afford ground for dismissing pending suits. Again the Collector cannot pass a decree for the amount adjudged by him to be payable by the tenant. Possibly, the intention is that the suit should come back to the court and a decree should be passed by the court but there is no statement to that effect. Or is the intention of the legislature to dismiss pending suits also but then why should the plaintiff be put to expense for the benefit of the defendant ? The section is wholly unintelligible.

MADRAS ACT No. XIII OF 1920.

The Mulgeni Rent Enhancement Act, 1920.

Preamble.

Whereas it is expedient to provide for the enchancement of rent on certain mulgeni tenures in the district of South Kanara and to provide for the apportionment of the difference between the assessment at the settlement commenced in 1902 and that at the settlement of 1819; It is hereby enacted as follows:—

Short title and local extent.

1. This Act may be called the Mulgeni Rent Enhancement Act, 1920, and shall be applicable to the whole of the district of South Kanara.

Mulgeni Tenures to which the Act applies.

2. The provisions of this Act shall apply to mulgeni tenures which were created or acquired prior to a date to be fixed in this behalf by the Local Government in respect of each taluk or other local area, and in respect of which there is no contract in writing between the mulgar and the mulgenidar providing for the payment of enhanced assessment.

No order or decree of a civil court passed before this Act comes into force shall operate to prevent the application of the Act to any such tenure.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,

Assessment.

(1) 'assessment' means the assessment to land revenue by Government.

Old assessment and new assessment.

(2) 'old assessment' and 'new assessment' mean, respectively, the assessment leviable before and after the revision of assessments which was commenced in 1902.

Mulgeni Tenure

(3) 'mulgeni tenure' means a holding of land in perpetuity on a fixed rent, whether in money or kind or both, and includes tenures of the description known as 'kayamgeni', 'nigdigeni' and 'sub-mulgeni', but not 'walawarg'.

Mulgar.

(4) 'mulgar' means the owner of land held under mulgeni tenure, his heirs, representatives and assigns, and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant, his heirs, representatives and assigns.

Mulgenidar.

(5) 'mulgenidar' means a tenant of land held under mulgeni tenure, his heirs, representatives and assigns, and includes a mortgagee

* The marginal notes are prfnted just above the sections.

in possession from such tenant or from his heirs, representatives or assigns.

Government may authorise other officers or persons to exercise powers of Collector.

4. It shall be competent to the Local Government to confer all or any of the powers and to impose all or any of the duties conferred or imposed on the Collector by this Act upon any other officer or person by notification in the official gazette.

Application for enhancement of rent.

5. Any mulgar may make an application in writing to the Collector to make an order for the enhancement of the rent payable to him under a mulgeni tenure.

Such application shall be in such form as the Local Government may prescribe and shall be accompanied by such fees as may be fixed by the Local Government.

Inquiry and determination of enhancement of rent.

6. On receiving an application under section 5, the collector shall hold an inquiry, and, if he is satisfied that the mulgeni tenure to which the application relates fulfils the conditions laid down in section 2, shall, in accordance with the provisions of the next following section, determine by an order in writing what enhancement, if any, shall be made in the rent payable in respect of the tenure.

Principles on which enhancement is made.

7. (1) Where the rent is payable in money, it shall be enhanced by an amount not exceeding the whole of the excess of the new assessment over the old.

(2) Where the rent is payable in kind, the increase in the assessment shall be divided between the mulgar and mulgenidar in the proportion borne by the old assessment to the new assessment on the land and the rent enhanced by an amount equal to the mulgenidar's share of the increase in the assessment.

(3) Where the rent is payable partly in money and partly in kind, the proportion that the money bears to the total rent shall be ascertained and the money rent enhanced by an amount not exceeding the same proportion of the increase in the assessment. The remainder of the increase in the assessment shall be apportioned in accordance with the principle stated in sub-section (2) and the mulgenidar's share shall be added to the rent:

Provided that, where good cause is shown for believing that an enhancement of the rent under sub-sections (1), (2) and (3) would be inequitable, the Collector may make a fair and equitable settlement.

(4) The increase in rent determined under this section shall be in money.

Mode of ascertainment of assessment.

8. In cases in which the old assessment on a mulgeni holding is not known, such assessment shall be calculated by apportioning the old assessment on the block of which it forms a part among the areas of which the block is made up according to the proportion which the settlement assessment of each such area bears to the settlement assessment of the whole of the block.

Provided that, where an apportionment between any such areas has already been made by the settlement officer, or by agreement between the parties concerned, such apportionment shall be accepted by the Collector even though it does not conform to the provisions of this section.

Explanation—'Block' in this section means any unit of area upon which a separate assessment was leviable immediately prior to the revision of assessments which was commenced in 1902.

Enhancement to remain in force until assessment is varied.

9. The enhancement in rent determined under section 6 shall remain in force unless and until the assessment is varied when, on application made by the mulgar or the mulgenidar, the Collector may direct such further enhancement or such reduction as may seem equitable having regard to the nature and extent of the variation in assessment.

When revision takes effect.

10. Any revision of rent under this Act shall take effect from the commencement of the revenue year in which application is made for such revision.

Appeal.

11. From every decision under this Act by a Collector or other officer or person empowered under section 4 an appeal shall lie to the district court.

The decision on appeal of the district court shall be final.

Reference to Collector of pending suits in civil courts at commencement of Act.

12. From and after the date on which this Act comes into force, no suit shall lie by any mulgenidar for the recovery of any sum paid before the said date in consequence of the increase in assessment, and all such suits as are pending in the civil courts on the date above referred to, in so far as they relate to the recovery of any such sums, shall be referred by the courts concerned to the Collector for disposal under this Act. The Collector shall thereupon proceed as if an application had been made to him under section 5 and shall treat the date of plaint as the date of application.

Power to make rules.

13. The Local Government may, after previous publication, make rules for the purpose of carrying out the provisions of this Act.

In particular and without prejudice to the generality of the foregoing provision, the Local Government may make rules—

(1) fixing the date specified in section 2;

(2) prescribing forms and the mode of service of notice under this Act;

(3) fixing the fees, costs and charges to be paid in respect of proceedings under this Act;

(4) prescribing the area in which the Collector or other officer or person empowered under section 4 of this Act should exercise jurisdiction and the procedure to be followed by the collector in the discharge of any duty imposed on him by or under this Act;
diction and the procedure to be followed by the Collector in the discharge of any duty imposed on him by or under this Act;

(5) providing for commutation and apportionment under subsections (2) and (3) of section 7.

Rules under the Act.

In exercise of the powers conferred by section 13 of the Madras Act XIII of 1920 (The Mulgeni Rent Enhancement Act, 1920), His Excellency the Governor in Council is pleased to make the following rules under the said Act:—

1. The provisions of the Act shall apply to Mulgeni tenures which were created or acquired in the taluks or other areas mentioned below prior to the dates noted against them:—

2. Applications under section 5 of the Act shall be made to the officer or person empowered under section 4 of the Act, or if there be no such officer or person to the Revenue Divisional Officer of the area in which the mulgeni holding concerned is situate.

(1) The whole of the present Mangalore taluk and villages mentioned in Schedule A which belonged to the old Mangalore taluk and which were transferred to the new Karkal taluk in 1912	1st November 1903.
(2) The whole of the present Udipi taluk and the villages mentioned in Schedule B which belonged to the old Udipi taluk and which were transferred to the new Karkal taluk in 1912.	1st June 1904
(3) Coondapur taluk.	1st May 1904.
(4) Kasaragod taluk	1st June 1904.
(5) Uppinangadi taluk	1st june 1905.

3. Applications under section 5 of the Act shall be made, as nearly as may be, in the form printed as Appendix I to these rules and shall be signed by the applicant and verified in accordance with the provisions

relating to verification of plaints and statements as provided in the Civil Procedure Code. As many copies of the application as there are counter-petitioners shall be filed with the application for service on counter-petitioners.

4. Separate applications shall be made in respect of each holding, and every application shall be accompanied by a fee of Rs. 2 and also process fees in court-fee stamps for issue of notice to parties or summonses to witnesses at the rates mentioned below:—

For each notice to a party or summons to a witness—

(a) to a single person 0 8 0

(b) to every additional person, if applied for at the same time and if residing in the same village 0 4 0

For notices and summonses applied for and ordered to be served as emergent, the fee shall be the ordinary fee and half as much again.

An application not complying with the provisions of this rule shall be returned for amendment or rejected.

5. A register of applications filed under section 5 of the Act shall be maintained in the form printed as Appendix II to these rules.

6. Should any of the parties desire summons to be issued for the appearance of any witness or production of any document, process-fees in court-fee stamps at the rates mentioned in rule 4 supra, and travelling allowance and batta in cash at the rates mentioned below shall be produced to enable service to be made sufficiently early to enable such witnesses to appear or such documents to be produced at the time and place specified in the summonses.

Scale of allowance to ordinary witnesses.

Class of witnesses.	Travelling allowances.			Allowance for subsistence and other expenses per diem not exceeding.
	By rail.	By road.	By sea or canal.	
				Rs. A. P.
First class ...	First-class fare ...	Eight annas per mile ...	Actual expense of passage.	4 8 0
Second class ...	Second-class fare.	Four annas per mile ...	Do.	3 0 0
Third class ...	Intermediate or if there be no intermediate third-class fare.	Two annas per mile ...	Do.	1 8 0
Fourth class ...	Third class fare...	Two annas per every 10 miles or if witness is unable to walk, one anna per mile.	Do.	0 12 0

7. Notices to parties and summonses to witnesses shall be served by delivering a copy to the person addressed or in his absence, to an adult male member of his family residing in his house or, in the absence of both, by affixing a copy to the residence of the addressee in the presence of the Potail or some other respectable ryot of the village.

8. On the date of hearing or other date to which the case may be adjourned, the parties may adduce all the evidence they wish to produce in support of their respective contentions.

9. Enquiry under section 6 of the Act shall be made as nearly as possible as in the trial of suits under the Civil Procedure Code after giving notice to the parties in sufficient time to enable them to be present either in person or through recognized agent or pleaders at the time and place fixed for the enquiry and to take out processes if so desired for the attendance of their witnesses or production of documents, provided that notices to parties shall be served at least ten days prior to the date fixed for hearing.

10. The Collector or other officer or person holding the enquiry shall then give his decision. He may pass such orders as to costs including pleader's fee as he deems fit. The pleader's fee shall be payable in accordance with the scale fixed in the Civil Rules of Practice.

11. The decision passed in the case shall be communicated to the parties as soon as it is passed and the date of such communication shall be noted in the order and signed by the officer passing the order. The decision in appeal, if any, against any order shall similarly be communicated to the parties.

12. If in any case local enquiry is necessary, the Collector or other officer or person empowered under section 4 may refer the matter to any officer not lower in rank than a revenue inspector whose report shall form part of the record.

13. If an application under section 5 of the Act is made to the Collector of the district, he may transfer it for disposal to the Revenue Divisional Officer or other officer or person, if any, empowered to act under section 4 of the Act.

14. To ascertain the money value of rent in kind, 14 seers of rice or 27 seers of paddy per rupee and 1,600 cocoanuts for Rs. 22 shall be taken as the commutation rates. For other produce such as areca nuts, straw, etc., the Revenue Divisional Officer or officer or person, if any, empowered under section 4 of the Act shall ascertain for each village or group of similarly situated villages their average value for the ten years prior to the year laid down in rule 11 and shall adopt it in calculating the money value of the rents in cases appertaining to those villages.

15. Any appeal to the District Court under section 11 of the Act shall be presented within thirty days from the date of the communi-

cation of the order passed under section 6 of the Act exclusive of the time for obtaining copy of the order.

Schedule A.

No. of the village.	Name of the village.	No. of the village.	Name of the village.	No. of the village.	Number of the village.
208	Andinje.	203	Nuralvettu.	197	Karimanel.
216	Badagakarandur	180	Padumarnadr.	36	Kedinja.
195	Badakodi.	190	Panapilla.	207	Kokradi.
218	Balania.	209	Pidya.	169	Kukkedi.
37	Bola.	177	Puchimogar.	192	Mantradi.
172	Gundumi.	40	Sanur.	202	Marodi.
196	Hosangadi.	194	Seerthadi.	198	Mudakodi.
47	Iruvail.	211	Sulkeri.	187	Mudakonage.
179	Kallabettu.	219	Tenkakarandur.	205	Naravi.
39	Kantavara.	182	Todar.	191	Nellkar.
180	Karanje.	171	Venur.	170	Nittade.
201	Kasipatna.	173	Arambodi.	186	Padukonaje.
188	Kella Puttige.	45	Badagamijar.	43	Paladka.
210	Kudyadi.	168	Bajre	200	Peradi.
206	Kutdur.	42	Beluvai.	183	Prantya.
41	Marpadi.	189	Daregudde.	44	Puttige.
178	Marur.	181	Hosabettu.	199	Savya.
185	Mudumarnad.	204	Idu.	214	Shirlalu.
217	Nalkur.	38	Kadandale.	213	Sulkerimogar.
212	Navara.	19	Kallamunku	50	Tankamijar.
18	Niddodi.	215	Karambar.	193	Valpadi.

Schedule B.

102	Andra.	81	Kakkunje.	92	Nadupala
78	Bailur.	116	Kallya.	106	Nalluru.
90	Belanje.	76	Kanajara.	132	Nandalike.
133	Belmannu	113	Karkala.	117	Ninjur.
89	Chara.	77	Kavaduru.	79	Nire
111	Durga.	104	Kervashe.	115	Nitte
84	Ellar.	87	Kerebettu.	96	Padukudur.
93	Hebri.	91	Kochuru.	130	Palli.
101	Hermande.	114	Kukkundur.	107	Ranjala.
100	Hirgana.	105	Mala.	103	Shirlala.
108	Irvathur.	98	Marne (Ajekar).	86	Shivapura.
112	Jarkala.	109	Miyar.	131	Suda.
94	Kabbinale.	110	Madar.	97	Varanga (Shivapura).
80	Kadatala.	95	Mudradi.	99	Yerlapadi.

APPENDIX I.

Form of application.

1. Name, description and residence of the applicant.
2. Name, description and residence of the counter-petitioner.
3. Taluk and village where mulgeni land is situated.

4. Particulars of the claim—
   (*a*) Date of the tenure.
   (*b*) Name of the parties.
   (*c*) Extent and assessment of the mulgeni land.
   (*d*) Rent payable.
   (*e*) Number of the mulgeni patta if one has been issued at settlement.
5. If the mulgeni land has been sub-let on mulgeni, the particulars of the sub-mulgeni—
   (*a*) Date.
   (*b*) Name of the parties.
   (*c*) Extent and old assessment of the land sub-leased.
   (*d*) Rent payable under the sub-lease.
6. Relief claimed.
7. Particulars of documents produced.
8. Remarks.

NOTE.—All documents in support of the claim should be produced with the application or their absence explained in the remarks column.

APPENDIX II.

Form of Register.

1. Serial number.
2. Date of filing of application.
3. Name, etc., of the petitioner.
4. Name, etc., of the counter-petitioner.
5. Name of the taluk or village where mulgeni land is situated.
6. Particulars of the claim.
7. Date fixed for hearing.
8. Date of the issue of notice to parties.
9. Decision with date.
10. Date of communication of the decision to the parties.
11. Whether there was an appeal and if so, with what result. Date of the appellate order.
12. Date of communication of the appellate order to the parties.
13. Remarks.—(Here dates of adjournments and other particulars, if any, should be noted.)

Notice to petitioner.

From

The Revenue Divisional Officer.

To

(Name, description and place of residence.)

Take notice that the petition No. filed by you on under section 5 of the Mulgeni Rent Enhancement Act (XIII of 1920) has been fixed for hearing on 192 and you are hereby required

to appear in this office at in person or by pleader on the above said date at o'clock. You must be prepared to produce on that date all the witnesses upon whose evidence and any documents not produced along with your application upon which you intend to rely in support of your claim. In case you wish any of your witnesses should be summoned, you should apply sufficiently early for their being summoned to appear on the date above mentioned. Take notice that in default of your appearance on the aforesaid date, the petition will be heard and disposed of in your absence.

Given under my hand and the seal of my office, this day of

(By order)

Head clerk.

Notice to counter-petitioner.

From

The Revenue Divisional Officer.

To

(Name, description and place of residence.)

Whereas has filed a petition under section 5 of the Mulgeni Rent Enhancement Act (XIII of 1920) in respect of (here describe the land) and you are hereby required to appear in this office at in person or by pleader on the day of 192 at o'clock to answer the petition ; and as the day fixed for your appearance is appointed for the final disposal of the petition you must be prepared to produce on that day all the witnesses upon whose evidence and the documents upon which you intend to rely in support of your defence. In case you wish any of your witnesses should be summoned, you should apply sufficiently early for their being summoned to appear on the date above mentioned.

Take notice that in default of your appearance on the aforesaid date, the petition will be heard and disposed of in your absence.

Given under my hand and the seal of the office this day of 19

(By order)

Head clerk.

THE MULGENI RENT ENHANCEMENT ACT.

Summons to witnesses.

From

The Revenue Divisional Officer.

To

(Name, description and place of residence.)

Whereas your attendance is required to give evidence on behalf of in connexion with the petition filed by for enhancement of Mulgeni rent, you are hereby required to appear personally before

this office at on at o'clock and to bring with you the following documents.

Given under my hand and the seal of my office this day of 19 .

(By order)

Head clerk.

REGULATION II OF 1090.

THE COCHIN TENANCY REGULATION.

Passed by His Highness the Raja on the 8th day of Thulam 1090 *corresponding to the 24th day of October* 1914.

Preamble. Whereas it is expedient to define in certain respects the law relating to landlord and tenant in Cochin, to make better provision for the payment of compensation for the improvements made by tenants, and to provide for the speedy realisation of rent and other customary dues, by investing the District Munsiffs and District Judges with summary jurisdiction, it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and Local extent. 1. This Regulation may be called "The Cochin Tenancy Regulation" and it shall be applicable to the whole of Cochin.

Interpretation clause. 2. In this Regulation unless there is something repugnant in the subject or context:— . . . . .

Landlord. (*a*) "Landlord" means a person immediately under whom a tenant holds.

Tenant. (b) "Tenant" with its grammatical variations and cognate expressions means and includes a person, who as lessee, sub-lessee, mortgagee, or sub-mortgagee, or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land, is in possession thereof or who with the intention of paying the customary rent to the person entitled to cultivate or let waste land, brings such land under cultivation and is in occupation thereof as cultivator after giving due notice of his intention to do so in writing to such person and if such person has not within 30 days of the receipt of the notice raised any objection thereto in writing.

Kanom tenant. (c) "Kanom tenant" means and includes a tenant who holds lands on payment of a consideration in money or in kind or partly in money and partly in kind to the landlord for his holding, and on a demise made or renewed by a landlord on a tenure that is subject to renewal after a fixed

period on payment of a renewal fee, and also includes the assignees and representatives in interest of such tenants.

Ejectment.

(d) "Ejectment" includes redemption or recovery of possession of land leased or mortgaged.

Improvement.

(e) "Improvement" means any work or product of a work which adds to the value of the holding, and is suitable to it, and consistent with the purpose for which the holding was let, mortgaged or occupied.

Pattom.

(f) "Pattom" means whatever is lawfully payable or deliverable in money or in kind or partly in money and partly in kind by a tenant to his landlord on account of the use or occupation of land held by him.

Michavarom.

(g) "Michavarom" means whatever is agreed to be paid to a landlord by a kanom tenant after deducting from the pattom the interest due on the kanom.

Customary dues.

(h) "Customary dues" means the cesses or contributions, such as, Onakazcha, Alakkada, Kombuchakka, and the like, which are payable to the landlord by the tenant on account of his holding according to contract or custom.

Renewal fee.

(i) "Renewal fee" means a fee or fees payable by a Kanom tenant to his landlord on renewal of his holding under such denominations as Polichezthu avakasom, Sakshi avakasom, Opputhusi, Kazcha and the like, and does not include Soujanyam.

Kanom.

(j) "Kanom" means the consideration in money or in kind or partly in money and partly in kind paid to the landlord by a kanom tenant for his holding.

Puramkadom.

(k) "Puramkadom" means any further advance received by the landlord from the kanom tenant on the security of lands held by him.

Melcharth.

(l) "Melcharth" means and includes a subsequent mortgage in respect of a kanom holding entitling the grantee thereof to evict the prior kanom tenant.

Saving of custom and customary rights.

3. Nothing in this Regulation shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions.

CHAPTER II.

Of Compensation for Improvements.

What are presumed to be improvements.

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purpose of this Regulation :—

(a) The erection of dwelling houses, buildings appurtenant thereto, and farm buildings;

(b) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes;

(c) the preparation of land for irrigation;

(d) the conversion of one into two crop land;

(e) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land which is culturable;

(f) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(g) the renewal or reconstruction of any of the foregoing works, or alterations therein, or additions thereto; and

(h) the planting or protection and maintenance of fruit trees, timber trees and other useful trees and plants.

Tenant entitled to compensation on ejectment.

5. (1) Every tenant shall, on ejectment, be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid; and every tenant to whom compensation is so due, shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage money or premium (if any) be entitled to remain in possession until ejectment in execution of a decree or order of Court: Provided that nothing herein contained shall be construed as affecting the provisions of Chapter IV of the Cochin Revenue Recovery Regulation No. IV of 1083.

(2) A tenant so continuing in possession shall, during such continuance, hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

Decree in the ejectment to be conditional on payment of compensation ascertained under this Regulation on the difference between it and the amount, if any, adjudged to the plaintiff from the defendant.

6. (1) In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the Court shall ascertain, as provided in sections 9 to 18, the amount of the compensation, and shall pass a decree declaring the amount so found due and ordering that, on payment by the plaintiff into the Court of the amount so found due and also the mortgage money or premium (if any), the defendant shall put the plaintiff into possession of the land with the improvements

thereon

(2) If in such suit the Court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the Court shall set off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejectment the amount (if any) remaining due to any defendant after such set-off.

Compensation for sub sequent improvements and re-valuation if necessary, of improvements at the time of ejectment.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree, and the re-valuation of an improvement for which compensation has been so adjudged when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejectment, as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy, shall be determined by the order of the Court executing the decree, and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (3) of section 241 of the Code of Civil Procedure, Regulation 1 of 1079.

Tenant may remove building, works or trees not deemed improvements within a time to be fixed

7. Whenever a Court passes a decree or order for ejectment against a tenant and such tenant has erected any building, constructed any work, or planted any tree, which, the Court finds, is not an improvement for which compensation can be claimed, but which, the Court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the Court in its decree or order.

Power to make rules for appointment of assessors, etc.

8. The Diwan may, with the sanction of His Highness the Raja, from time to time make, rules requiring the Court to associate with itself for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors, as the Diwan thinks fit, determining the qualification of those assessors, the mode of selecting them and the fee payable to them, and prescribing the procedure to be followed in case of difference of opinion between the Judge and one or more of such assessors. The rules so made shall be published in the Cochin Government Gazette and shall have the force of law.

Improvement producing an increase in the value of the annual net produce.

9. When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the Court shall determine, as nearly as may be, the average net money value of such increase and shall award as compensation for the improvement three-fourths of the amount arrived at by capitalising such net money value at 20 times.

Explanation.— The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and cesses.

Improvements consisting of trees or plants spontaneously grown during the tenancy or sown or planted by tenants.

10. When the improvement is not an improvement to which section 9 applies, but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realise, if sold as timber by public auction.

Other kinds of improvements.

11. When the improvement is not an improvement to which section 9 or 10 applies, the compensation to be awarded shall be the cost of the labour including supervision thereof, and of the materials together with other expenditure (if any) which would at the time of the valuation be required to make the improvement, less a reasonable reduction on account of the deterioration (if any) which may have taken place from age or other cause.

Value of improvements to be ascertained in the way most favourable to tenant.

12 Notwithstanding anything contained in section 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Illustrations.—(*a*) The compensation to be awarded for a jack tree as a fruit tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(*b*) The compensation to be awarded for an immature *casuarina* plantation is ascertained under section 10 be Rs. 20, but under section 11 to be Rs. 100.

In each case the Court shall award the higher amount.

13. When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

Improvement consisting in the protection and maintenance of trees and and plants not sown or planted by tenants and of trees and plants spontaneously grown prior to the tenancy.

14. The Diwan may prepare for the whole or any part of the State, tables showing the maximum and the minimum rates of compensation to be awarded under this Regulation for all or any class of improvements and when such tables have been published the amount awarded as compensation under sections 9, 10, 11, and 12 shall not, except where the Court is satisfied that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

Power to frame tables of maximum and minimum rates of compensation.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Regulation the Diwan may prepare tables for the whole or any part of Cochin showing all or any of the following matters :—

Power to prepare tables of prices of products, the cost of cultivating paddy, planting, protecting and maintaining trees and plants.

(a) The price of cocoanuts, arecanuts, pepper and paddy ;

(b) the cost of (i) cultivating and harvesting a crop of paddy ; (ii) planting, protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine, until the tree or vine is in bearing ; (iii) protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall, on publication be receivable in evidence and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved ; provided that, in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

Such tables to be presumptive evidence that prices and costs therein mentioned are correct.

16. In respect of any product for which no table showing the price has been published, and whenever the presumption under section 15 as to the price is sought to be rebutted, the Court shall adopt as the money value for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the Taluk

Value to be ascertained where no table has been prepared or the correctness of the price mentioned in the table is disputed.

where the land is situated, for a period of 10 years immediately preceding the institution of the suit.

Tables to be published.

16. The tables prepared under this Regulation shall be published in English and Malayalam in the Cochin Government Gazette and shall be kept publicly posted in the Courts having jurisdiction over the area to which the tables apply.

The Diwan may, by like publication, cancel or vary from time to time, the tables so published.

Compensation may be refused where trees have been over-planted.

18. When trees are planted in excess of the following scale, the Court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may, notwithstanding anything hereinbefore contained, either refuse to grant compensation or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature.

Cocoanut trees	120 per acre.
Arecanut trees	720 „
Jack trees	60 „

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

Contracts affecting tenant's right to make improvements and claim compensation under the Regulation invalid.

19. Nothing in any contract made after the 9th March 1912 (26th Kumbhom 1087) shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Regulation.

Proviso.

Provided that nothing herein contained shall affect any agreement in writing registered and made after effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

CHAPTER III.

OF RENEWALS OF KANOM HOLDINGS AND EJECTMENT OF KANOM TENANTS.

Application of Chapters III and IV.

20. The provisions of this and Chapter IV shall apply only to kanom tenants who, by themselves or through their predecessors in interest, have uninterruptedly held the holding for a period of not less than thirty years, prior to the coming into force of this Regulation.

21. A kanom tenant may ,at the end of 12 years from the date of kanom demise or of its last renewal, surrender in writing his holding to the landlord, provided that he had given notice in writing to the landlord of his intention to do so six months prior to the date of expiry of the period of the said demise or of its last renewal. In cases of surrender the landlord shall not be liable to the refund of the kanom or to pay to the tenant the value of the improvements, and he shall not be bound to accept the surrender unless it be in respect of the entire holding and the whole of the arrears of michavarom and the other dues, if any, are also tendered at the time of surrender.

Tenant may surrender his holding at the end of 12 years.

Explanation :—The expression "entire holding" in this section means all the lands comprised in one demise.

22. In the absence of an express written contract to the contrary and if a kanom tenant does not surrender the holding as provided for in the foregoing section 21, it shall be obligatory on the part of the landlord on the expiry of a period of 12 years from the date of every demise given to a kanom tenant, and thenceforward at the end of every successive period of 12 years, to give, and on the part of the kanom tenant to accept, a renewal of the demise save and except in the cases mentioned in the following section.

Renewal of kanom holding every 12 years.

23. (1) On the expiry of the demise, the kanom tenant shall be liable to eviction from the whole or a portion of his holding as the case may be, for any of the following causes :—

Ejection of kanom tenants.

(a) If the holding or a portion thereof is required by the landlord for the *bona fide* purpose of extending his own residential house or building a new house for his residence.

Provided that, if the landlord fails to extend his residence or build a new house for his residence within a period of three years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure.

(b) If the holding or a portion thereof is required by the landlord for *bona fide* agricultural improvement which requires capital outlay and which the tenant is not willing to undertake or is not capable of undertaking.

Provided that, if the landlord fails to carry out the improvements within six years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure.

(c) If the kanom tenant refuses to pay enhanced michavarom under the provisions of section 25.

(d) If the kanom tenant neglects or refuses to pay renewal fees and take a renewal within one year from the date of expiry of the lease, provided that the neglect or refusal is not due to *bona fide* difference between the kanom tenant and the landlord as to the terms of the renewal.

When the tenant has incurred forfeiture for non-payment of renewal fees and the landlord sues to eject the tenant, if, at the first hearing of the suit or within such time as the Court may think fit to fix in the circumstances of the case ,the tenant pays into the Court the renewal fees and other dues in arrears together with the interest thereon and the landlord's cost of the suit, the Court shall pass an order relieving the tenant against forfeiture and thereupon the tenant shall hold the land as if the forfeiture had not occurred.

(e) If the kanom tenant refuses to pay additional kanom subject to a maximum of 12 times the enhanced michavarom ,for which the landlord is prepared to pay interest at the rates fixed for the old kanom.

Explanation :—" Enhanced michavarom " means the difference between michavarom before renewal and that after renewal.

(f) If the kanom tenant fails to pay michavarom during the currency of the lease for three years consecutively, notwithstanding an express demand in writing made at any time after the first year's arrears shall have accrued.

The written demand or notice mentioned in this clause shall be presented to the Court of the District Munsiff in whose local jurisdiction the holding is situated and it shall be served by such Courts on payment by the landlord of the prescribed process fees in the manner provided for the service of summons in the Code of Civil Procedure which fee shall be recoverable from the tenant as any other dues. But no Court fees shall be levied on the application presented to the Court by the landlord requesting the service of such demand or notice.

(g) If the kanom tenant wilfully denies the landlord's title.

Explanation:—A denial of the landlord's title under a *bona fide* mistake of fact is not wilful within the meaning of clause (g).

(h) If the kanom tenant intentionally and wilfully commits such acts of waste as are calculated to materially and permanently impair the value and utility of the holding.

A suit for ejectment on the ground stated in clause (h) should not be entertained unless the landlord has served a notice on the tenant specifying the particular act of waste complained of, and when the waste is capable of remedy, requiring the tenant to remedy the same and in any case to pay reasonable compensation for the waste, and the tenant has failed to comply within a reasonable time, with that request.

(i) If the kanom tenant assigns his interest in the land permanently, or leases or mortgages it for temporary occupation without

giving previous notice of such transfer, lease or mortgage to his landlord and against the valid objection of the landlord, if any, raised within one month after the receipt of the notice.

(2) During the currency of the lease, the kanom tenant shall also be liable to eviction under clauses (g) and (h) in the foregoing sub-section (1) of this section.

Melcharth when valid.

24. In all cases in which a kanom tenant is liable to eviction under section 23, sub-section (1), the landlord may grant a melcharth. Melcharth in all other cases shall be invalid.

CHAPTER IV.

Of Michavarom and customary dues.

Enchancement of michavarom.

25. Subject to the limitations and conditions prescribed in section 30, every landlord may, at the time of periodical renewal, enhance the michavarom payable by the kanom tenant,

(1) by increasing the pattom on the land ;

(2) by reducing the rate of interest allowed to the kanom tenant on the kanom if, upon consideration of the rates generally allowed in the same revenue village for similar transactions, such rate is found to be excessive ;

(3) by both the methods (1) and (2).

Rate of renewal fees.

26. The renewal fees payable by a kanom tenant on renewal of his demise shall be levied at the uniform rate of 27½ per cent. of the kanom and 15 per cent. of the puramkadom inclusive of customary dues under Sakshi Avakasom, Opputhusi and the like, in addition to a kazcha of eight annas for each document renewed. Provided that in respect of puramkadoms bearing the same rate of interest as kanom ,the rate of renewal fee shall be 27½ per cent. of the said puramkadoms.

Particulars of kanom demises.

27. (1) In every demise granted or renewed to kanom tenant, or in its counterpart executed by the kanom tenant, after this Regulation comes into force,

(a) the name, description and extent of the holding,

(b) the pattom of the holding,

(c) deduction therefrom on account of interest on the kanom,

(d) the amount of michavarom agreed upon,

(e) the renewal fees and customary dues intended to be levied from the kanom tenant and the occasion on which they are to be levied,

shall be set forth separately.

(2) If the michavarom or other dues are made payable in kind, it shall be specified according to the standard measure prescribed by the Diwan from time to time, or which may be agreed upon by the parties.

Payment of michavarom, renewal fees, etc.

28. Every kanom tenant shall pay his landlord the michavarom, renewal fees and customary dues at such time and place as may be agreed upon between them in writing, and, in the absence of such written agreement, in the manner following, *viz.*,

(a) the annual michavarom shall be paid on or before the last day of Kumbhom of each Malayalam year, except in the case of Puncha and Kole niloms in respect of which the michavarom shall be paid on or before the last day of Karkidagom of each Malayalam year.

(b) If the michavarom is payable in money, it shall be paid at the residence of the landlord ,and if in kind ,at the residence or granary of the landlord provided that such residence or granary is within the village in which the holding is situated, and if there is no such residence or granary within the village, at such place within the village as may be indicated by the landlord in writing to the tenant.

(c) Customary dues, after demand—except in cases where they become due on recognised dates.

Contents of receipt for michavarom.

29. Every kanom tenant paying michavarom or customary dues shall be entitled to a receipt specifying—

(a) the date of payment,

(b) the amount paid,

(c) the period for which it is paid,

(d) the holding in respect of which it is paid, and

(e) such other particulars as may be necessary to elucidate the transaction.

Such receipt shall be exempt from stamp duty under the provisions of the Cochin Stamp Regulation No. VI of 1083.

When landlord entitled to claim enhancement of michavarom.

30. The landlord of a holding shall not be entitled to claim an enhancement of the michavarom fixed under any existing kanom demise except for one or more of the following grounds, *viz.*—

(a) In the case of niloms,

(1) that the area of the holding actually under cultivation is in excess of the area on which the pattom was previously fixed,

(2) that the rate of the current pattom is below the prevailing rate for lands of a similar description and quality, with similar advantages in the same locality, padom or padavu, and that there is no reason for the holding being assessed at so low a rate,

(3) that the productive powers of the land comprised in the holding as compared with those powers at the time when the current

pattom was fixed, have increased from causes not merely temporary or casual.

(b) In the case of gardens and payattupattom parambas, in addition to the foregoing grounds—

(4) that the number of trees in the holding on which pattom is assessable has increased,

(5) that there has been a substantial rise in the average local prices of the produce of these trees during the currency of the previous kanom demise.

Provided that, when the excess to the area under cultivation or the increase in the productive powers of the land or in the number of assessable trees, is due to reclamation or other works of permanent improvement effected at the expense of the kanom tenant, the cost of such reclamation or other works of permanent improvement shall be determined in accordance with the provisions of Chapter II of this Regulation, and the interest on the cost so determined, calculated at the same rate at which the interest on the kanom is allowed to the tenant, shall be deducted from the difference between the old and new pattom before the michavarom is fixed.

Kanom tenant may claim reduction of michavarom in certain cases

31. A kanom tenant may, at the time of renewal, claim reduction of michavarom on one or the other of the following grounds:—

(a) that the area of his holding has been diminished not by his neglect, but by the action of the sea, river or lake, or like causes,

(b) that the soil of the holding has, without the fault or neglect of the tenant, become permanently deteriorated

(c) that, in the case of gardens, there has been a fall in the average local prices of the produce of the trees in the holding during the currency of the current kanom demise,

(d) that the number of assessable trees in the holding has substantially diminished by causes not preventible by the tenant,

(e) that the rate of the current pattom of his holding is above the prevailing rate for similar lands in the same locality, padom or padavu, in which it is situated and that there is no reason for the holding being assessed at so high a rate.

CHAPTER V.

Of jurisdiction of Courts over claims for Pattom, Michavarom, Renewal fees and other dues.

Summary jurisdiction of Courts.

32. Claims by landlords for recovery of arrears of pattom, michavarom, renewal fees, or other dues may, when the amount or value of such claim does not exceed Rs. 200, be taken cognizance of and disposed of summarily by the Courts hereinafter mentioned:—

(1) District Munsiffs shall have jurisdiction in respect of all such claims where the amount or value of the claim does not exceed Rs. 50.

(2) District Judges shall have similar jurisdiction where the amount or value of the claim exceeds Rs. 50 but does not exceed Rs. 200.

Procedure for trial of non-appealable cases to be followed in summary suits under this Regulation.

33. Except as otherwise provided by this Regulation, the procedure prescribed by the Cochin Code of Civil Procedure, Regulation 1 of 1079, for the trial of small cause suits shall be the procedure to be followed by the District Munsiffs and District Judges in all suits and proceedings summarily cognizable by them under this Regulation, and all the Chapters and sections of the Code of Civil Procedure specified in schedule II thereof shall extend (as far as they are applicable) to Courts exercising jurisdiction under this Chapter.

Exemption from Court fees in certain cases.

34. The plaint in such cases shall be exempt from payment of Court fees, if the claim be for the recovery of arrears which accrued due within twelve months next preceding its institution ; if otherwise, the regular Court fee which would have been levied, had the claim been instituted as a regular suit in a competent Court, shall be levied on the plaint.

Agent of landlord.

35. Any agent of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of summary suit or application under this Regulation, be deemed to be a recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending or in which the application is made.

Power of Court to decide question of title to immovable property or status.

36. If in the decision of a suit cognisable summarily by a Munsiff or a District Judge under section 32, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immoveable property or the status of either of them or of those under whom they claim, which, if it had been the immedite subject matter of the claim, would not be cognisable by the Munsiff or the District Judge under the procedure applicable to small cause suits, it shall be competent to the District Munsiff or the District Judge, as the case may be, to decide any question of title to immoveable property or status, so far as it may be necessary to do for the determination of the suit ; but such decision shall not be conclusive evidence of such title or status in any action other than those under this Chapter between the same parties or their representatives.

Procedure when tenant admits the money due but pleads title of third person.

37. (1) When a tenant defendant admits that money is due from him on account of michavarom or customary dues, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognisance of the plea, unless the defendant pays into Court the amount so admitted to be due.

(2) When such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person, within three months of the notice, institutes a regular suit against the plaintiff and therein obtains an order restraining payment of the money it shall be paid over to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff the money paid to him under clause (3) of this section.

Decision of Munsiffs and District Judges to be final.

38. The decision of Munsiffs and District Judges passed in summary suits under this Chapter shall be final, but shall be subject to revision by the Chief Court in the manner provided for by section 584 of the Civil Procedure Code, Regulation No. I of 1079.

Provided that no judgment, decree or order, in supersession of the decision or order of the subordinate Court ,shall be passed by the Chief Court without giving the parties an opportunity of stating their case.

Power of Chief Court to make rules.

39. The Chief Court may, from time to time, make rules consistent with this Regulation for regulating the practice and procedure of Courts, acting under this Regulation. The rules so made shall be published in the Cochin Government Gazette, and shall have the force of law.

Arrears of pattom and other dues to have priority over other charges.

40. Arrears of pattom, michavaraom, renewal fees, and other dues due to the landlord shall be a charge on the holding of a tenant and shall have priority over all other charges on the same save arrears of assessment due to Government.

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